THE JENMI AND KUDIYAN

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REGULATION V OF 1071 OF TRAVANCORE

WITH AN INTRODUCTION AND COMMENTARIES

BY

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PREFACE

THIS Regulation is one of the most important in force in this State. It is my only apology for this publication which, however, has the advantage of being the first on the subject. I beg that these circumstances may weigh with my readers in judging the numerous defects which I know the book will contain.

My thanks are due to my printers, The Law Printing House, Madras, for the speedy and neat execution of the work.

KOTTAYAM,
25th March 1912.

K. S. PANDALAI.

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INTRODUCTION.

The traditional origin of ownership in land in Kerala is an interesting legend. Kerala desom, in which Travancore is included was recovered from the sea by Sage Parasurama who, for the expiation of his sins, parcelled out the country among a few Brahmins. The Courts and the Executive in this country appear to have acted on the assumption of the truth of this legend (*a*). A more probable theory is that "the Brahmins, as the leading occupiers of the soil until then without owners, or deserted by the aborigines who fled to the hills, had a better title than others who must, if the traditionary accounts be true, have colonised the country at a later period" (*b*). The mode of acquisition of title by occupation was not unknown to Hindu Law (*c*).

2. I do not propose to enter into a discussion of the comparative merits of the theories as to the origin of ownership in land, but shall content myself with merely stating them. A consideration, however, of the social and political organisation of the country would be of help in understanding the customary incidents of the several land-tenures. The organisation was of the purely Hindu type. "The unit of the social system was the joint family" and a number of joint families associated themselves for political and administrative purposes and formed the Village Community. The Brahmin Village Communities were called Gramoms and the non-Brahmin, Kara, Pitaka, Cheri, Muri and Desom. The traditional account of the colonisation of Kerala says, that the Brahmins who were rewarded by Sage Parasurama "established 64 Gramoms or Brahmin villages and

(*a*) See the cases cited in para 60, *infra*, as to the interpretation of "jenmi" under the Royal Proclamation. See also, para 9 *infra* for the grounds of the exemption of the lands of the Brahmins from taxation.

(*b*) Mr. Kunhiraman Nair's Memo on Land Tenures, Part I, para 40.

(*c*) Manu, Ch. 9. sloka 44.

introduced a sort of Republican Government. The actual Government was vested in four Kayakoms or Councils elected as representatives of the 64 Gramoms, assisted, or presided over, by an Officer styled Raksha Purushan (Protector) who was to be elected by the whole body as their Executive Officer and to remain in office for a period of 3 years each. Each Kayakom further elected an Avarodha Nampi to serve as a sort of Councillor to the Raksha Purushan and lands adequate for the support of these officers were assigned to them severally." The Kerala Ulpathy, however, says that the Brahmins assigned *Shud-Bhagom* (one-sixth) from the produce of all the landed property of every one for the maintenance of these Rulers and their establishment. "The Office of Raksha Purushan subsequently fell into disuse on the appearance in the country of some foreign Hindu Noblemen who under the style and designation of Perumals (or great personages), were allowed to rule the country for 12 years each, but was, at a later period, revived with all the privileges of the Perumals. Another set of Perumals then succeeded. The installation of the first Perumal" (Keyaperumal) "is said to have happened in *Pushya* (eighth Lunar Asterism) in the month of Maghom in Karkadaga Vyazham which, as has been ascertained from the Kali year given, was 216 A. D. This day in cycle of Jupiter thus became important in the history of Keralam, and a great feast in commemoration of the event called Mamankom in which all the Rajahs of Keralam including Travancore took part, used for a long time to be held in Tirunavaye in South Malabar"(*a*). "At the end of this feast (Mamankom), *all* prior leases of the lands were considered to be at an end, and fresh grants were to be obtained at the beginning of the next reign. In all the principal deeds, the position of Jupiter is to be mentioned" (*b*).

3. The internal administration of the country by village communities continued in spite of the changes in the Surpreme Government.

4. Various causes tended to the distribution of the land among the people. The village headmen, in imitation of the

(*a*) Mr. Kunhiraman Nair's Memo on Land Tenures, part 1, para 20.

(*b*) Mr. Jonathan Duncan, in the first volume of the transactions of the Bombay Literary Society.

Raksha Purushans and Perumals, "took a portion of the village lands in return for the protection afforded by them to the rest of the community." The Brahmins founded and endowed several temples and assigned large tracts of land for their maintenance. The petty Chiefs and Rulers imitated their example and founded and endowed other temples.

5. On the disappearance of the Perumals the country was divided among a number of independent and rival Rulers. These chiefs flourished in Travancore down to the 17th and 18th centuries when the paramount State in Travancore subdued all the others and extended its dominions from Cape Comorin in the south to Parur and Alengad in the north.

6. The possessions of these petty chiefs were in several instances confiscated by the Sirkar. And during the administration of the State by Col. Munro, the management of a large number of wealthy temples was also assumed by the Sirkar. These and other causes such as escheat, etc., increased the Jenmom lands of the Sirkar.

7. Thus, four classes of people, *viz.*, (1) Brahmins (2) Devaswoms, (3) Rajahs and local chieftains, and (4) Madampimars, *i.e.*, heads of villages, must have been the owners of all the land. These regarded the land as their private property. The land belonged not to the individual but to the joint family or Corporation. The private property in land possessed by these classes has been distinguished by the word "Jenmom" signifying birth right. The property of the subject races or non-Brahmins came to be distinguished at later times by the term "Kudi-Jenmom" signifying the birth-right of the *kudi* or subjects.

8. The term "Jenmom" signifies the absolute ownership of the soil and of everything standing or growing thereon and also of everything underneath the soil. That the ownership was so extensive is evident from the various modes of transfer prevalent in the country and the words used in such transfers. The jenmom properties of Travancore correspond to the allodial properties of Europe. At the present day this absolute ownership is subject to three limitations imposed by the Legislature. The Royal Proclamation of 14th June 1881, corresponding to the 2nd Mithunam 1056, laid down that all rights in metals and minerals

throughout the State, by whomsoever and under whatever tenure the land might be held, were Royalties belonging to the Crown, and that they could not be enjoyed, sold, leased or otherwise appropriated except with the permission of the Government. The preamble to the Proclamation shews that it was intended to correct any misapprehension that might exist in respect of mining rights in lands belonging to Devaswoms, Brahmins and other Jenmis, or proprietors or lessees holding directly under Government. The second limitation is the liability to be compulsorily purchased for public purposes under the Land Acquisition Regulation (III of 1067). A third limitation has recently been imposed by the Treasure Trove Regulation (III of 1084).

9. Land taxes were levied only in strict conformity with the Hindu Sastras. The lands of the Brahmins and Devaswoms were exempt from taxation so long as they remained in the actual possession of the owner; for, says Manu, "a king even though dying with want must not receive any tax from a Brahmin learned in the Vedas"(*a*). The other classes of proprietors paid Rajahbhogam or tax at the rate prescribed in the Sastras. The holders of land under the Government in its capacity as Jenmi paid the full pattom or rent.

10. The Sirkar is at present the largest Jenmi. About three-fourths of the land in the State belong on Jenmom to the Sirkar, the remaining one-fourth being shared between the various classes mentioned in para 7. The exact number of jenmis and the extent of their possessions cannot be correctly estimated before the close of the present settlement. The lands of these jenmis are in the Sirkar accounts distinguished by the term "Thanathu" (*i.e.*, which is one's own).

11. The lands owned by these Jenmis are divided into three classes, (1) Jenmom lands "which are entirely freehold and exempt from payment of any revenue to Government under any circumstances;" (2) Jenmom lands "which are exempt from the payment of any revenue to Government," but which may "subsequently become liable to it under certain conditions," and (3) Jenmom lands "subject *ab initio* to the payment of a light demand" (*b*).

(*a*) Manu, Ch. VII, Sloka 133.

(*b*) Revenue Hand-book by Mr. M. R. Krishna Rao, Pt. III, Ch. I, Para 2.

12. The first class of Jenmom land comprises "certain entire Proverthies and Desoms or tracts of territory and a few detached gardens belonging to individuals or institutions." They are "exempt from taxation of any kind and are wholly free from Government interference in matters of revenue administration" (*a*). They are:

(1) The two Adhigaroms or Proverthies of Attingal and Edakode and a few gardens belonging to Sreepadom or Their Highnesses the Ranis.

(2) The Kilimanoor Adhigarom belonging to the Koil Tampuran.

(3) The Desoms of the Edappally Rajah (outside Edappally proper or Edappally Edavagay) situated in the Taluqs of Changanacherry, Karthigapally and Thiruvellah.

(4) The Desoms of the Poonjat Chief (Meenachil).

(5) The Desoms attached to the Manikandeswaren Pagoda (Kottarakara Taluq).

(6) The Desom attached to Elenkunnappen Pagoda, (Pathanapuram).

(7) The Desom attached to the Kaviyur Pagoda (Thiruvellah Taluq).

(8) Do. do. to Pangottu Krishnaswmay Pagoda (Kottarakara Taluq).

(9) Do. do. to Mannady Bhagavathy (Kunnathur and Pathanapuram Taluqs).

(10) Do. do. to Panayannarkovil Bhagavathy (Thiruvellah Taluq).

(11) Do. do. to Kongurppully Namburipad's Sastha and Bhagavathy (Changanacherry Taluq).

(12) The Desoms belonging to Aghavoor Namburipad (Kottarakara, Karthigapally and Mavelikarai Taluqs).

(13) Do. do. to Aghavoor and Ummanpally Namburipad (Quilon Taluq).

(14) Do. do. to Vanjipuzhai Pandarathil (Chengannur Taluq).

(*a*) Revenue Hand-book by Mr. M. R. Krishna Rao, Pt. III, Ch. I, Para 3.

These tracts are, in the Sirkar accounts, called *Adhigara Ozhivu* or *Desa Ozhivu*. The difference between the two is only one of area. The number of Desoms and Adhigaroms thus held absolutely free of all assessement is 76. Three of these are called Adhigaroms (1 and 2 above), 24 are called Desoms and 49 muries.

13. Under the second class of Jenmom land mentioned in para 11 fall all Devaswoms and Brahmaswoms, *i. e.*, properties belonging to the pagodas and the Brahmins respectively. The peculiarities of this kind of Jenmom land are that: (1) its normal condition is absolute freedom from taxation; (2) this condition ceases the moment the land passes into the hands of others for a money consideration; (3) on such alienation taking place, the land becomes liable to a light tax to Government called Rajahbhogam; and (4) the light assessment continues for ever a burden on the estate, even though the Jenmi redeemed the kanom or mortgage (*a*). Some of the Jenmis of this class also belong to the first, but the properties are distinct, being outside the tracts mentioned in para 12. In 1883 there were 984 families of Brahmin Jenmis and of the Devaswoms, 1088 were under private management (*b*).

14. The third class of Jenmom land belongs to the "madampimars who are generally Nairs or other chieftains", being non-Brahmins. The characteristic of this class is that "the lands are from the beginning subject to the Rajahbhogam tax" which is levied whether the lands are in the hands of the owners or not (*e*). The names of the chiefs or families included in this class are:—

(1) Perumpadappu Swaroopam (The Cochin Rajah).
(2) The Kodungalloor Rajah.
(3) The Poonjat Perumal.
(4) Pandarathinmar.
(5) Thiruvappadanmar.
(6) Thambakanmar.
(7) Kovilanmar.
(8) Paliathu Menon.
(9) Vadayattu Chief.
(10) Native Madampimar.

(*a*) Revenue Hand-book by Mr. M. R. Krishna Rao, Part III, Ch. I, para 4.
(*b*) Mr. Kunhiraman Nair's Memo on Land Tenures, Part I, paras 54 and 60.
(*c*) Revenue Hand-book by Mr. M. R. Krishna Rao, Part III, Ch. I, para 5.

(11) Foreign Madampimar.
(12) Naickenmar.
(13) Varienmar." (*a*)

The number of Jenmis of this class is not large. The estates of the most important of them have been confiscated for rebellion and various other causes and only a very few of them still remains. The Jenmis are known as Kymal, Kartha, Unnithan, Idaprabhoo, etc. The Vadayattu Chief owned, according to the Settlement of 1012, 2604 gardens and appears to be the richest of these. The Native Madampimars are found in large numbers in the Taluq of Sherthalay but the total number of them in the whole State is not known. The last two, Naickenmar and Varienmar possessed only two and three gardens respectively at the time of the Settlement in 1012 M.E.

15. Except the few holders of *Desa Ozhivu* and *Adhigara Ozhivu* mentioned in para 12, the estates of these Jenmis consist of small parcels of wet lands and gardens scattered over here and there in the same or different villages. It has been mentioned before (see para 13) that there were 984 familes of Brahmin Jenmis in 1883. Of these 778 appeared before the Jenmi and Tenant Commission appointed in 1060. Seventy-two Jenmis out of those who appeared before the Commission, had not let out any lands on Kanapattom. The following statement compiled by the Jenmi and Tenant Commission (*b*) shews how the estates of the remaining 706 were situated :—

The number of Jenmis who hold estates		in 1	taluq only was	392
Do.	do.	2	do.	165
Do.	do.	3	do.	69
Do.	do.	4	do.	29
Do.	do.	5	do.	15
Do.	do.	6	do.	12
Do.	do.	7	do.	11
Do.	do.	8	do.	3
Do.	do.	9	do.	4
Do.	do.	10	do.	2
Do.	do.	11	do.	1
Do.	do.	12	do.	3
			Total ...	706

(*a*) Mr. Ramiengar's Settlement Memorandum, para 52.
(*b*) Mr. Kunhiraman Nair's Memo on Land Tenures, Part I, para 59.

16. The Devaswom Jenmis could not on account of their position cultivate their own lands. They employed tenants from whom they collected rent. The Brahmin Jenmis too, were on account of their religious avocations, averse to taking part in actual cultivation. Thus grew up a large body of cultivating peasants. The Jenmis entered into various agreements with these tenants as to the division of the produce. In some cases, the proportion was fixed by local custom. The documents executed by the Jenmis to these subordinate holders clearly expressed the rights that were intended to be conveyed. Various forms of transfers of land are found to have been freely made use of by these land owners. These may be divided into 7 classes :—

(1) *Attiper* or sales.

(2) *Karaimas* or permanent leases.

(3) *Otti*, *panayam* or mortgages.

(4) Kanapattom.

(5) Improving cases or *Kuzhikanom*.

(6) *Inams* or grants by the Ruling Chiefs and members of the aristocracy.

(7) *Verumpattom* or simple leases from year to year. Of the classes (2) to (7) there are more than 150 kinds found in Travancore. None of the above, except sales and Kanapattoms, have been the subject of legislation and I shall henceforth confine myself to the subject of Kanapattom.

17. It has been said before that the Devaswoms and the higher order of Brahmin Jenmis did not take part in the cultivation of the soil, but employed tenants from whom they collected rent. The Jenmi's income from his lands was derived chiefly by means of transfers on Kanapattoms and simple leases. Before the conquest and consolidation of the country by the Maha Rajahs of Travancore, the Jenmi who had leased his lands on *verumpattom* or simple leases stood a fair chance of losing his rent. As the country was split up into several independent Kingdoms it was not a difficult feat for any one to escape into a neighbouring State. And as the relations between the several independent kingdoms were not always friendly, the Jenmi would generally find it impossible to realise his rent from a runaway

tenant. This was probably the origin of the practice of taking from the tenant a sum of money as security for the rent. Interest on this sum at the usual market rate was allowed to the tenant and the balance rent or pattom was provided in the deed to be paid to the Jenmi. This lease with security came in later times to be designated Kanapattom, to distinguish it probably, from the simple lease or lease without security. The amount advanced by the tenant was known as kanom. The documents evidencing this arrangement between the Jenmi and the tenant were known by different names in different places. In North Travancore it was called Patta Ola, Oozhavu Pattom, Oozhavu Ola and Oobhayam Pattom and in South Travancore by the name of Maraya Pattom.

18. The Jenmis raised money in other ways also. They executed usufructuary mortgages for their lands. If the rent was equal to the interest on the amount borrowed, the Jenmi got only a nominal rent. If the interest was less than the rent, it was generally provided in the mortgage-deed that the excess rent was to be paid annually by the mortgagee to the Jenmi. The Brahmin Jenmis of South Travancore appear to have at a very early period transferred the bulk of their lands on mortgages (a).

19. But neither the lease with security nor the mortgage with possession was deemed to confer on the tenant or mortgagee a right of permanent occupancy. The forms of transfer prevalent in the country had already provided for such leases. When the Jenmis or land-lords desired to confer rights of permanent occupancy on strangers, they executed *karaima* leases, and to their servants or dependants, they gave lands on *Inams* or service tenures. The existence of these tenures clearly proves that the lease with security or the mortgage with possession was not considered either by the tenant or the Jenmi as creating any right of permanent occupancy in the holding.

20. But a tenant was not changed except for good reasons. Several circumstances contributed to the same tenant being allowed to continue in possession of his holding without disturbance. The pressure of population was not so great as it is now. There

(a) Mr. Kunhiraman Nair's Memo on Land Tenures, Part I, para 14.

was, therefore, practically no competition among the cultivating peasants. The majority of the rich landlords were of the non-agricultural class who found it impossible to derive any income from their lands without the help of their tenants and hence they were not changed without good reason. Lastly, it was a point of honour with many of the rich Jenmis not to evict their tenants. It should not, however, be supposed that all the Jenmis were uniformly kind to their tenants. It was only the rich landlords that could afford to be so. Many a poor Jenmi either cultivated his small jenmom property himself or let the lands to any one who offered him the largest rent.

21. At a time when money was scarce and the difficulties of realisation of rent very great, the tenant who furnished security would be liberally treated by the land-lord. The same rate of rent was not exacted from him as from the simple lessee. It need not be said that he was not changed without good reasons nor so often as the simple lessee or *Verumpattakaran.* The amount advanced by him was made a charge on the land recoverable from the Jenmi when the tenant was evicted. During the time the tenant was in possession of the land, interest on the amount was allowed to him out of the rent or pattom. These were substantial inducements for popularising leases with security.

22. The tenants were permitted to continue in possession of their holdings by renewals of their lease-deeds. The Jenmis demanded a fee for such renewal. The tenants too must have been willing to pay a fee for the right to hold the land for another term. In the case of mortgages, as the lands were becoming dearer everyday, the tenants preferred renewal on payment of fees to redemption. The growing necessities of the Jenmis, the assurance of income from their lands for another term, the temporary relief from payment of the amount advanced by the kudiyan and the prospect of a small gain in the shape of the renewal fee or reduction of the debt induced the Jenmis to renew the documents rather than redeem them. In all cases where such renewals have taken place on payment of the fee, the transactions are now called kanapattoms, even though the original document was only a lease or usufructuary mortgage.

23. There is another theory as to the origin of Kanapattoms which deserves to be noticed (*a*). According to that theory, the Jenmis are the Brahmins who followed the fortunes of the great conqueror of Kerala. It was among these men that he parcelled out the lands. Hence their possessions were extensive and they exercised most of the functions of sovereignty. The lands were mostly, if not wholly, uncultivated wastes. The only means at first of making any income out of these lands was by cultivating them with the help of their servants and dependants. But this required a large army of servants and then their work had to be supervised. Hence arose the practice of leasing out the lands at a fixed rent in kind. The inability or unfitness of the Jenmis to cultivate the lands themselves greatly helped the leasing. But in these leases the tenant, having no interest in the holding, had no motive to improve the lands. The waste lands required capital to re-claim them. The necessary capital was probably advanced by the Jenmi himself at first. But the Jenmi could not be always advancing the necessary funds. The Jenmi, therefore, allowed the tenant to spend his own money and gave him a corresponding abatement of rent. "Reduced to writing the transaction would appear as if the tenant had made a loan to the Jenmi on condition that the Jenmi would allow the interest of it to be deducted from the rent payable by the tenant." The tenant who held the lands thus would find the tenure more secure than one who held on a bare lease, for the former could be evicted only on payment of the loan. This circumstance would only make the tenants too willing to advance more money, for the Jenmi's burden was only increased thereby. The extravagant habits of the Jemni helped the tenant's desire to so add to his burden. But the increase of the debt had a contrary effect on the rent due to the Jenmi. The Jenmi would attempt to meet this by increasing the rent, because of the increased productiveness of the land. The tenants, of course, resisted any such attempt. This conflict probably resulted in both parties agreeing that the revision of the rent, &c., should take place at fixed intervals, *e. g.*, 12 years.

24. This theory does not fit in with all the ascertained facts

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(*a*) Sir. T. Madhava Rao's memorandum on the relations between Jenmi and Kudiyan.

in respect of Kanapattom transactions. Some of the Kanapattoms of the present day undoubtedly have been brought into existence in the manner described above but it is not correct to say that all of them had their origin in improving leases. Where the lands demised had already been brought under cultivation and were not wastes, the theory would not explain the existing circumstances. The paddy lands require no improvement and generally nothing is claimed or awarded in respect of them. They could not have been demised on improving leases. Lastly it has been established by the early inquirers into the land tenures on the West Coast, and the fact is admitted both by the Jenmis and Kudiyans, that many Kanapattoms had their origin in the Jenmi borrowing money from the Kudiyan, *e.g.*, the mortgages of South Travancore. The explanation of the origin of renewal and the various fees collected at that time is also unsatisfactory.

25. The term Kanapattom has been newly coined to distinguish the tenure by whatever name known by which the rent is secured by an advance charged on the land and carrying interest. This complex tenure is peculiar to the West Coast. It is not a simple lease where the lessee has to pay the full annual rent and where he may be removed at the pleasure of the Jenmi. It is not an "Otti" or usufructuary mortgage which is described by Major Walker thus: "It is a sum of money lent on a paramba the interest of which is equal to the pattom pledged for the principal but *redeemable at pleasure*." "Thus in an otti no payment of rent is made to the Jenmi, the rent being just or nearly equal to the interest on the money paid to the Jenmi. In the matter of payment of rent the otti and the simple lease or Verumpattom are at the opposite poles. But both these opposite tenures are found mixed up in Kanapattoms. It is a mortgage or pledge of the land for a sum of money less than its full value and it is also a lease of the land by the borrower to the lender for the difference between the full rent (pattom) and the interest on the money lent. But though this tenure has the characteristics of both the mortgage and the lease, it is more correct to call it a lease than a mortgage. The prominent feature of the transaction is of the lease. The advance paid by the lessee is regarded by the parties not as a loan which the Jenmi desires to contract on the

security of the land but as an advance intended to be *itself a pledge* for the due payment of the annual rent."

26. The Kanapattom tenant was put into possession of the land under a deed executed by the Jenmi who gave the tenant a pebble or stone also along with the deed as symbolical delivery of possession. Such a custom is still found to exist among the Jenmis of Vaikam Gramom.

27, The term of the lease was originally 3 years [*Kalam Moovandal*]

This period was probably fixed with reference to the length of the administration of the country by Raksha Purushans or Protectors. It was customary in ancient days to renew every lease or other muniment of title on the change of each administration. Hence the length of the administration was also the duration of the lease. When the former period was extended to 12 years with the advent of the Perumals the term of the leases was likewise extended to 12 years. But the scribes having probably forgotten the origin of the term and out of respect for everything old retained the ancient phraseology of *Kalam Moovandu* in the deeds. This circumstance has led to some curious decisions. All the early inquirers into the subject of Land Tenure on the West Coast are agreed that any deed given by the Jenmi to the tenant fixed the period for which it was to be in operation. The periods were generally 3, 6 or 12 years. The literal meaning of the term *Kalam Moovandu* being only 3 years and the term being found in Kanapattom deeds which were renewable or redeemable only at the end of 12 years, some Judges came to the conclusion that *Kalam Moovandu* was a technical expression used in Kanapattom deeds to denote the duration of the lease, *viz.*, 12 years (*a*). The term had, however, no such technical meaning and the decisions were probably due to the origin of Kanapattoms not having been sufficiently understood. The reason of its occurrence in Kanapattom deeds has been explained above. On the strength of the interpretation of *Kalam Moovandu*, the term *Kalam Ayyandu* has been held to mean a "period of 20 years" (*b*). The

(*a*) A. S. 21 of 1042 (unreported).

(*b*) *Narayanan Vasudevan Elayathu* v. *Kesavan Kesavan*, 2 T. L. R. 57.

reasoning of the Judges in this case shews that they did not understand the origin of the expression *Kalam Moovandu* and that they merely followed its interpretation in (*a*) and allowed a proportionate time for *Kalam Ayyandu*. Again, in a later case (*c*) the High Court laid down that *Kalam Orandal pantheerandekku* to mean 'for a period of 48 years.' This decision too appears to have been due to a blind acceptance of the correctness of the two prior decisions (*a*) and (*b*), but there can be no doubt now that these decisions are wrong.

28. The rate of Kanom on each parah of land or garden is not uniform. Nor does there appear to be any principle on which it was levied. The Jenmis took what sum they could persuade or compel their tenants to part with. The Memo on Land Tenures by Mr. Kunhiraman Nair shows that in the Quilon and Kottayam Divisions the average rate of Kanom on a parah of paddy land is very small. The minimum is two Rasies or five fanams and the maximum nearly 35 Rasies or 87½ fanams. In South Travancore the rate is higher than the above. They range between 10 and 80 Rasies (*d*). This is probably due to the fact that in South Travancore the Kanapattoms of the present day were mostly usufructuary mortgages. In such cases, the interest on the advance and the Jenmi pattom would be almost equal.

29. There was an established division of produce between the Jenmi and the cultivator but this share was not uniform throughout the State. The productiveness of the soil, the amount of pattom on the adjoining lands, the amount of the Kanom advance were all factors taken into account in assessing the Jenmi-pattom.

30. The various rates of interest prevalent in North Travancore on money lent or invested on the security of immoveable property are :—

(*a*) A. S. 21 of 1042 (unreported).

(*b*) *Narayanan Vasudevan Elayathu* v. *Kesavan Kesavan*, 2 T. L. R. 57.

(*c*) S. A. 240 of 1076 (unreported).

(*d*) Mr. Kunhiraman Nair's Memo on Land Tenures, Part I, paras 108 and 109.

(1) Makani Palisa.
(2) Arakkal Palisa.
(3) Nanaliyuri Palisa.
(4) Arunali Palisa.
(5) Kal Palisa.
(6) Ara Palisa.
(7) Mukkal Palisa, and
(8) Ner(full) Palisa.

In the case of paddy lands *Makani Palisa* means 1/16 of a parah of paddy for every ten Puthens (one Puthen = $1\frac{1}{2}$ chuckrams) of the Kanom. In the case of gardens *Makani Palisa* will be 1/16 of a Puthen for every 10 Puthens. Thus, if the Kanom is 1,000 Puthens

Makani Palisa	= $6\frac{1}{4}$ paras of paddy (in the case of paddy lands.)	or	$6\frac{1}{4}$ Puthens. (in the case of gardens.)
Arakkal Palisa	= $12\frac{1}{2}$ parahs	or	$12\frac{1}{2}$ Puthens.
Nanaliyuri Palisa	= 15 Do	or	15 Do
Arunali Palisa	= 20 Do	or	20 Do
Kal Palisa	= 25 Do	or	25 Do
Ara Palisa	= 50 Do	or	50 Do
Mukkal Palisa	= 75 Do	or	75 Do
Ner (full) Palisa	= 100 Do	or	100 Do (*a*)

31. The rates prevailing in North Travancore in respect of Kanapattoms and other transactions were the *Nanaliyuri* or *Arakkal Palisa, i.e.*, 15 or $12\frac{1}{2}$ parahs of paddy for 1,000 Puthens (*b*).

32. In the Quilon Division, the normal rate of interest on Kanapattom transactions was one Edangali of paddy per Rasi or 10 Chuckrams. And in the Trivandrum and Padmanabhapuram Divisions, the average rate of interest was 4 paras of paddy for 100 fs. Both these rates of interest are identical (*b*). Thus it will be seen that the normal rate of interest on Kanapattom transactions was uniform throughout the State.

33. Having thus considered the origin and nature of Kanapattoms, it now remains to consider the rights and liabilities of the parties to the transaction.

(*a*) Mr. Kunhiraman Nair's Memo on Land Tenures, Part I, para 111.
(*b*) Mr. Kunhiraman Nair's Memo on Land Tenures, Part I, para 113.

34. The payments made by the tenants to the Jenmi fell under 3 heads (1) annual (2) occasional and (3) once in 12 years. The most important of the annual payments is the Michavaram or rent fixed by the deed. The tenant was bound to pay the rent every year in default of which interest accrued on the arrears. The Jenmi was also entitled to re-imburse himself from the Kanom amount in his hands. *Onakalcha* and *Oolsavakoppu* are also annual payments due to the Jenmis. The chief among the occasional payments are the *Arukalcha* or *Aradiyanthram* fees and the *Kalasavari*. The *Arukalcha* fees are contributions by the tenant on the occasion of the six important ceremonies in the Brahmin Jenmi's house-hold. *Kalasavari* is a fee levied by the Devaswom Jenmis, corresponding to the *Arukalcha* of the Brahmin Jenmis. This fee has to be paid when *kalasoms* or purification ceremonies take place in the Devaswom. The amount of these fees depended upon the position in life of the Kudiyan and the extent of his holding. In some places it was calculated on the Jenmi-pattom, or on the Michavaram or rent reserved in the lease-deed. The payments to be made once in 12 years are on account of the renewals of the lease-deeds and will be treated of later on. (See paras 36—39).

35. The Jenmi's other rights were

(*a*) The Jenmi being the owner of the soil of the holding was entitled to everything standing or growing thereon. The tenant was entitled only to a share of the value of the improvements made by him.

(*b*) The Jenmi was entitled to redeem the lease at the end of the term. But this right was exercised only in exceptional cases, *e.g.*, if the tenant denied his Jenmi's title or committed waste or allowed Michavaram exceeding the amount of the Kanom to fall into arrears. In all cases of eviction, the Kudiyan was entitled to be paid the value of the improvements made by him.

(*c*) The Jenmi enjoyed a reasonable right of veto against the transfer by the tenant of a portion of the holding.

(*d*) If the tenant himself offered to surrender his holding he had to forfeit a fixed percentage of the Kanom

amount but the Jenmi was *bound* to accept the surrender and pay for the improvements.

(*e*) Instead of redeeming at the end of the term, the Jenmis used to renew the deeds if the Kudiyans paid a fee for such renewal. At the time of renewals the right of the Jenmi to revise and re-adjust the terms of the tenancy was fully admitted and freely exercised.

36. The reasons which induced the Jenmis to grant and the Kudiyans to accept a renewal have been mentioned before (see para 20). The idea of renewal had probably its origin in the popular notion that muniments of title created in one reign or administration were not respected unless the successor also recognised it and, therefore, had to be renewed in the succeeding administration. This takes us back to a very primitive state of society when the conqueror did not only acquire the public rights of the conquered King but also the private rights of the defeated King's subjects. As the Jenmis were a kind of feudal lords, the principle of the renewal on a change of the political administration was extended to private individuals. They insisted upon the tenants renewing their documents on the death of every head of the Jenmi's family. The deeds had, of course, to be renewed on the termination of the period fixed in them. And on all these occasions the tenant had to pay certain fees to the Jenmi. This was hardly fair to the tenant. As rights to property came to be more and more respected, the injustice of too frequent renewals was greatly felt, especially if there happened to be a succession of deaths in the Jenmi's family. The practice thus arose of renewing these deeds only after the termination of the period fixed in them.

37. For the privilege of being allowed to remain in possession of the land for another period, the Jenmis insisted upon their tenants remitting a fixed per centage of the Kanom amount. The amount so remitted was known as *Avakasom*. The reduction being made at each renewal, the Kanapattom was being gradually redeemed. It was probably to prevent this automatic redemption that the renewal fee or *Adukkuvathoo* was devised. This fee, being a substitute for the reduction of the family debt went into the

family exchequer. Some think that the term *Adukkuvathoo* is a corruption of '*Adukkummuthel*' or money enabling one to approach another. This is due to the popular notion that no inferior can approach his superior without a present or Nuzzur. But this explanation does not appear quite satisfactory. The term is a corruption of "Adakkuvathu" or that which is appropriated or taken by the Jenmi. It will be remembered that at each renewal the Jenmi took or appropriated a portion of the Kanom in consideration of the renewal and this fee was intended as a substitute for the amount so appropriated. In A. S. 200 of 1075 it has been held that *Adukkuvathoo* fees were "the means by which the Jenmis appropriated what share they could of the improved condition of their lands and which is regarded as a premium for the renewal of the lease, such renewal having been at one time optional with the Jenmis."

38. Another fee which the Kudiyan had to pay once in 12 years was called *Olappanam.* Before the introduction of stamp paper, the documents executed by parties were engrossed on cadjans. The Jenmis as territorial lords had their own accountants whose duty it was to write the Jenmi's accounts and, during the periods of renewal, to prepare the deeds to be executed by the Jenmis. The accountants attested the documents and generally had to do everything in connection with its execution by the Jenmi. For writing the Jenmi's accounts, the accountant was generally given some property on favourable terms. But the additional work during times of renewal was remunerated by each Kudiyan paying the accountant a small sum towards the expenses, etc., in connection with the preparation of the deed. This fee was known as *Olappanam* or the price of the cadjan.

39. After the deed was prepared by the accountant it had to be executed by the Jenmi. The Jenmi claimed a small fee for himself for signing the deed. The *Adukkuvathoo* having to be paid to the family is probably the reason why the Jenmi claimed a fee for himself for signing the deed. This fee was called *Opputhoosi* (oppu=signature. and thoosi=needle or style with which the signature was made on the cadjan). This fee was also called *oppukanom* (oppu=signature, and kanom=fee or amount) and *thoosikanom* (thoosi=needle).

40. A large number of rulings (a) has laid down that *Olappanam* and *Opputhooi* denote the same kind of fee and, therefore, a Jenmi cannot, in the absence of express contract, claim both of them. The ground of these decisions was that both these fees were originally intended to meet the expense of the execution of the renewal deed. It will be seen, however, from the preceding paras that these fees, though payable on the same occasion, were distinct in their origin and were due to different people. It may be that the *Olappanam* or the fee paid to the accountant came to be paid in later times to the Jenmi along with *Opputhoosi* and that the Jenmi did not pay the accountant his share. The accountant, being a servant of the Jenmi was not always prepared to press his claims and thus both these fees came in course of time to be appropriated by the Jenmi and to be regarded by him as due to himself. After the introduction of the Stamp and Registration Regulations, the justice of allowing the Jenmi to recover these fees is doubtful. But as the decisions justify the levy of these fees on the ground of their having come to be regarded as landlord's dues, the propriety of allowing the Jenmi to recover only one of them and not both is not apparent.

41. At the time of the renewal, the Jenmis had the right of re-adjusting the terms of the tenancy and enhancing the michavaram. This was effected in various ways. The Jenmis might insist upon an enhancement of the Jenmipattom or they may refuse to pay interest on the Kanom amount at a rate higher than the one prevailing in the locality, in either of which cases there will be an increase in the michavaram payable to the Jenmi. In North Travancore either of these modes was employed to enhance the michavaram. In South Travancore the Jenmi, instead of seeking an increase in the annual payments, was generally satisfied with obtaining an additional Kanom called *Ettartham* from the tenant. *Ettartham* is nothing more than the capitalized value of michavaram.

(a) *Janardhanan Sankaran* v. *Kali Narayani*, 16 T. L. R. 93; *Kotharatharoo Numburipad* v. *Kunju Pillay*, 17 T. L. R. 150; *Sankari Pilla Thangachi* v. *Padmanabharu*, 18 T. L. R. 149; *Sankari Pillai Thangachi* v. *Pakaravoor Peria Swamyar*, 19 T. L. R. 68 and *Kuncheria Mathan* v. *Ramakrishna Iyen Ramasubba Iyen*, 22 T. L. R. 131.

42. The Kudiyan's rights were

(*a*) a right to enjoy the land for 12 years;

(*b*) a right to sell, mortgage or otherwise alienate his interest in the holding, and, with the Jenmi's consent, a right to sell his interest in a portion of the holding;

(*c*) a right to make improvements suitable to the holding and to be compensated therefor at the time of eviction;

(*d*) a right to compel the Jenmi to accept surrender of the holding;

(*e*) a right to cut down the branches of trees and trees not yielding valuable timber for fuel or for other domestic purposes.

The Kudiyan was bound

(*a*) to pay michavaram, renewal fees and other customary dues;

(*b*) to report to the Jenmi any invasion of his right by third parties; and

(*c*) to share the value of the improvements with the Jenmi at the time of eviction or surrender.

43. The Jenmis and the Kudiyans generally exercised their respective rights without injury to each other. So long as the relations between the parties were smooth and cordial, as they admittedly were for a very long time, the absence of Regulations defining their rights was not felt to be a hardship. This happy circumstance was due to the social and political organisation of the country. The rich land-owners were a kind of feudal lords. The various classes of tenants who held the Jenmi's lands were his vassals and looked to him for protection from foreign and domestic foes. The Brahmins on account of their position as land-owners, religious teachers and acknowledged leaders of the country, were looked up to by the other communities and they, in their turn, used their position and influence generally to the advantage of their tenants and dependants. That the Brahmin landlords as a class have not changed their sentiments with the change in the times is well known. But the tenants have, unlike the Jenmis, been affected by the progress of western civilization. The monopoly in land and a sense of insecurity on account of the

Jenmi's right of eviction thus became causes of complaint to the cultivating peasants. The steady increase of population and the absence of any other profession except agriculture led to more and more persons becoming dependent on land for their subsistence. The Jenmis having no source of income except their lands were compelled to exact as much as they could from their tenants and this only increased the discontent. The great demand for cultivable lands helped the Jenmi's wish to let his lands to the highest bidder. In south Travancore the bulk of the lands was, as stated before, in the possession of mortgagees. It has also been stated that the interest on the mortgage amount was almost equal to the Jenmipattom and that consequently the michavaram due to the Jenmi was small. But the increase in the value of the land gave the Jenmis their opportunity. The Jenmis began to demand from their tenants larger sums as advances and larger rent. The tenant did not always find it convenient or desirable to satisfy the Jenmis. But if a tenant failed to comply with the Jenmi's demand, he was promptly turned out of his holding. This led to serious discontent among the agricultural classes and complaints were made to the Government of H. H. The Maha Rajah. To allay the discontent, a communication containing the Commands of H. H. The Maha Rajah was, on the 25th Vrichigom 1005, sent to the Appeal Court. The communication in describing the practice of those days stated that the "Jenmis are in the habit of receiving their dues" on specified occasions "and of allowing the tenant to go on undisturbed" and that "such is the custom established and this custom is ancient." It also set forth that the Jenmis contrary to custom were ousting their tenants and directed "that in respect of all suits of this nature (for eviction) decided, filed or which may hereafter be preferred, the Courts maintain the established usage in the country, viz., that the tenant should pay the Jenmi his usual, ordinary and extraordinary dues, and that the Jenmi receive the same and let the tenant remain in possession and enjoyment of the property.'

44. There was apparently peace in the land for some time. But in less than 40 years, the discontent found to be existing in the beginning of the present century (M.E.) broke out afresh with renewed vigour. The remedies prescribed by the Royal

Commands of 1005 (M.E.) were found to be inadequate. The Commands were probably not being strictly enforced; for we find that the Courts in many cases decreed eviction. The tenants did not want to be evicted *under any circumstances*. The discontent became so acute that the Dewan (Sir. T. Madhava Rao) wrote thus :—"In Travancore there has been from time immemorial a class of large landed proprietors called Jenmis. Their lands * * * * * * have been largely alienated on what is called Kanapattom tenure. Under this tenure the ryots have been holding the Jenmom lands of the Jenmis subject to a rent to the landlord (Jenmi) abated to the extent of the interests alienated by him. Under this tenure thousands of ryots have been occupying lands for generations, building houses and churches, carrying out various improvements and in short looking upon their tenures as of a permanent character. An important question has now been raised and pressed by the Jenmis, it being whether they have not the right to eject the tenant on repayment of the consideration received at the time of the original lease. * * * * *. The question is of vital importance to agricultural prosperity and is engaging attention with a view to an early, final and equitable settlement" (*a*).

45. The advocates of the tenant's rights relied upon the following circumstances to support their contentions. (i) The tenants were seldom changed; this practice was tantamount to a recognition of the tenant's right to be in possession for ever. (ii) As soon as a Jenmi alienated lands on Kanapattom, the Sirkar assessed the land to revenue and this remained for ever a burden on the property. If the tenure was a redeemable one, the tax should have been removed at the time of redemption of the property by the Jenmi. The continuance of the tax shewed the irredeemability of the tenure. (iii) The tenants sold their rights without previously consulting the Jenmi and the Jenmi usually allowed the purchaser to attorn to him on payment of a small fee. The sale of the Kudiyan's rights were for sums larger than the Kanom and equal to the market value of the lands. If the lands were redeemable and the tenant entitled only to the Kanom and the value of improvements, the excess in the value

(*a*). The Administration Report of the State for 1041. (M.E.)

of the land should go to the Jenmi. But it was found that even though a sale of Kudiyan's rights took place with the Jenmi's knowledge he refrained from asserting his rights to get the increased value. This is inexplicable except on the supposition that the tenure was irredeemable. (iv) Another circumstance relied on to shew the irredeemability of the tenure was the practice followed by the Sirkar on the death of a Kudiyan without heirs. The Sirkar took the property and gave it on Pandarapattom to some tenant at the full pattom rate. The new tenant was directed to pay the Jenmi the annual michavaram and the balance of the pattom was to be paid to the Sirkar as tax. If the tenure was redeemable the action of the Sirkar was wrong. But the Jenmi does not seem to have objected to this procedure, thus leaving it to be inferred that the had no right to do so. (v) Again, when a tenant fell hopelessly into arrears, the Jenmi transferred possession of the land to a temporary tenant who undertook to pay the Jenmi the arrears due to him. But the new tenant was let into possession on the distinct understanding that on the old tenant reimbursing the temporary occupant the latter should restore the land to the former. The old tenant's right to get back the land cannot be explained except on the supposition that he was a permanent tenant. (vi) The holders of land under this tenure assumed and derived family names from their holdings. (vii) Certain social distinctive appellations and honours conferred by the Sirkar designated them also in reference to these holdings. (viii) The property was registered in the Sirkar accounts in the name of the tenant. The *Pathivoo* or Patta was also given to the tenant. This did not happen if the tenure was only a redeemable mortgage or lease.

46. These facts were almost all of them admitted by the Jenmis but they contested the conclusions drawn by the tenants from those facts. It will be seen that the Royal Commands of 1005 in laying down the practice of those ancient days said that the Jenmis were in the habit of receiving their dues on specified occasions and allowing the tenant to go on undisturbed. The Commands did not *negative the existence of* the Jenmi's right of ouster but, on the contrary, directed the Courts *to refuse to enforce* that right. The relationship of landlord and tenant being

admitted, the origin of the tenancy being in almost all instances known and the ancient laws prescribing the forms and words of each particular deed, there cannot possibly be any acquisition of a prescriptive right adverse to the landlord. The enquiries of the Jenmi commission have revealed the fact that in north Travancore many Jenmis were constantly evicting their tenants (*a*). The second ground mentioned in para 45 is also inconclusive. The Government, in exchange for the protection it affords, is entitled to call upon each and every owner of land to contribute to its support. It is the respect paid by the sovereigns of this State to the teachings of the ancient Rishis that has exempted the lands of the Jenmis from taxation. The Government permitted this immunity so long as the lands remained in the possession of the Jenmi. But the moment the lands passed out of the hands of the Jenmi for a money consideration, the Government imposed a tax on the land which they refused to withdraw even when the lands were redeemed by the Jenmi. Seeing that these favoured proprietors contribute little or nothing to the maintenance of the State, this refusal of Government is justifiable, but it does not shew that all the tenures created by the Jenmis for a money consideration are irredeemable. The third circumstance is more favourable to the Kudiyan than the two preceding ones. But in the deed given to the new tenant the amount of the old debt alone was mentioned though the sale might have been for larger sums And the attornment fee paid in addition to the renewal fees was really a bribe to the Jenmi not to exercise his right of ouster but, on the other hand, to continue the purchaser as tenant. Did any such purchaser without such payment and of right, obtain a renewal? The payment of the attornment fee shews the existence of and the willingness to exercise the right of ouster. The fourth ground has been condemned from very ancient times by the Courts and it has also been held that a Jenmi is not bound by such acts of the Sirkar. That the Jenmis did not question such acts of the Sirkar is due to the fact that their habits and customs were against such a course of conduct. They were a highly religious people, non-litigious and so forbearing as to be deemed cowardly. The fifth circumstance too is

(*a*) Mr. Kunjiraman Nair's Memo on Land Tenures, para 16, page 7.

attributable to the dislike of the Jenmi for anything new. The fault is not peculiar to the Jenmis. Many people prefer to keep old servants in spite of their numerous faults. This is no ground for supposing that the tenure was a permanent one. The other grounds mentioned in para 45 are equally inconclusive.

47. But there is no doubt that whatever be the terms or effect of the tenure, the tenants had for a very long time entertained the hope that they would not be evicted so long as they paid the rent regularly. And this hope was strengthened by the conduct of the Jenmis in continuing the same tenant for years together. In this connection another point too has to be considered. It will be remembered that the allodial proprietors of land in Kerala were a few men of the non-agricultural class and that the lands were mostly in the hands of cultivating peasants under this tenure. The agricultural prosperity of the State and the welfare of a very large portion of H. H. The Maha Rajah's subjects had also to be considered in determining whether the tenure was redeemable.

48. The subject was fully discussed by the first Judge of the late Sadr Court, Mr. M. Sadasivan Pillai, by the Dewan Sir T. Madhava Rao, and the British Residents Mr. Newill and his predecessor Mr. Fisher. On 1st February 1864, Mr. Fisher in a memo addressed to the Sadr Court expressed his opinion that "all therefore that seems to be wanting now is first to recognise the Kanom tenure as renewable periodically but not revocable so long as the holder pays the *Michavaram* and other dues demandable on renewal by the Jenmi, secondly to simplify as much as possible the means of recovering the Michavaram and fees and to provide for the periodical renewal of deeds and payments of fees by such arrangements as will make the tenant's title depend on punctuality aud ensure for him equal punctuality of renewal of his title by withholding the fees payable thereon until the title is renewed." He suggested the passing of a Regulation on the lines of Regulation XXIX of 1802 and Regulation V of 1822 for the easy recovery of rent, etc.

49. Mr. Sadasivan Pillai was of opinion that "one scheme of action to settle existing disputes and to simplify existing tenures so far as possible, and another directed to the future having

for its object the prevention of doubtful tenures of the kind being hereafter created" should be laid down. The difficulties then existing could, in his opinion, be avoided in future "by a law defining how a document ought to be worded if intended to give the tenant a right of renewal, how if otherwise, by making it necessary to adopt a given expression to convey a given intention * *." "It is easy to make clear provisions of the kind for the future and there will be no hardship in compelling people to be clear in the expression of their intentions and in enforcing a particular phraseology * * *." "* * * the principle should be to let the parties regulate their own terms hereafter, the legislature only assisting them in recording those terms clearly * * *." With regard to existing disputes, "the expediency of perpetuating this tenure by legislation was" in Mr. Sadasivan Pillai's opinion "very questionable. The endeavour ought rather to be to put an end to this complicated tenure by which a conflicting co-proprietary right is given in the land to the Jenmis and the tenants." Though a combination of conflicting interests may have been serviceable and necessary in ancient times when a sort of feudal tie existed between the landlord and his tenants the policy and object of all modern administration, he said, should be to sweep away this conflict of interests and vest the sole proprietorship in one individual (*a*).

50. Mr. Newill who succeeded Mr. Fisher did not desire to go so far as his predecessor. He disapproved of Mr. Fisher's suggestion to prohibit eviction of tenants after the usual period of 12 years and suggested, on 5th May 1866, that as a first step towards the equitable adjustment of the rights of the parties, a proclamation be issued stating "that after a fixed date, all official transactions in connection with Kanapattom lands will be regulated by the terms of the lease as expressed in the document itself and that all parties concerned should accordingly be careful to express definitely the terms and conditions of the engagement in the document."

51. The suggestions of Messrs. Newill and Sadasivan Pillai did not find favour with the Dewan, Sir T. Madava Rao. He

(*a*) Mr. Sadasivan Pillai's Memo on the relation between Jenmis and Kudiyans.

deprecated any attempt to decide the question by mere analogies or by the adoption of the opinions of British authorities in respect of the state of things in the District of Malabar. Analogies, he thought, were misleading. The land tenures of Malabar had received a "rude shock" by the Mahomedan invasion and it was only after this that the opinion of the European enquirers were recorded. The land tenures of Travancore received no disturbance from outside and continued in their original complexity. He even deprecated "any construction being placed upon the instruments of transfer from the Jenmi to the tenant, merely for the reason that looked at by themselves, they can bear such construction." "Supposing the instruments are open to more than one construction" he said, "the adoption of any save and except that which consist with the acts and deportments of the parties to the instruments" should not be permitted. He would not look even to what was the understanding between them "in ages gone by." The most safe and solid ground on which to rest the decision of this important question was, in his opinion, of a two-fold character; first, the custom of the country; and secondly, utility. If a valid custom be found to be existing and that custom be proved to concur with utility, he thought that such a custom should be maintained. He thought that the custom found to be existing was good and therefore "the conclusion was unanimously arrived at that certain tenures covered by the general designation of Kanapattom are not redeemable, in other words that the tenant holding under such tenures is a perpetual tenant and as such cannot be ousted; that the Jenmi or landlord was perpetually entitled to an annual rent and other fees, and in certain cases to fines for renewal of lease, the said rent being under certain limitations of local usage subject to periodical re-adjustment" (*a*).

52. The Dewan, therefore, recommended the issue of a proclamation, now known as the Royal Proclamation of 25th Karkadagom, 1042. He also recommended that another enactment should be framed for the speedy recovery of the Jenmi's dues, but the latter proposal was not acted upon at that time

(*a*). Sir T. Madhava Rao's Memo on the relation between Jenmis and Kudiyans.

owing to various reasons. The proclamation is published as Appendix A. It did nothing more than "re-affirm and render clear the sentiments" expressed in the Royal Communications of 25th Vrichigom 1005 and 14th Thulam 1007. It did not contain anything new or startling but only what was "satisfactorily demonstrated" to have "long been the agrarian custom of the country." It was believed that it "admirably protects mutual interests of the tenants and landlords" and "that it is strongly conducive to agricultural improvements and prosperity." The Dewan hoped that "the provisions of this declaratory Notification, and those of His Highness' Notification of 1865 enfranchising the extensive crown lands comprehended under the designation of sirkar pattom * * * constitute what may be termed the Magna Charta of the Travancore ryot" *(a)*.

53. I propose to stray a little at this stage to shew how our neighbours have solved this difficult question. The land tenures in the District of Malabar in British India and the Native State of Cochin are similar to those of Travancore. There are a large number of tenants in those countries enjoying properties on Kanapattom.

54. In September 1880, a Mopla committed a murder in the Walwanad Amsom of the Malabar District. The ostensible reason was the defection from Mahomedanism of a young Cheruma boy. The boy was the only victim. The Collector of the District, Mr. McWatters was of opinion that the murder was not mainly due to religious fanaticism but to agrarian discontent. The Government of Madras accepted this view. In January 1881, the Government of Madras appointed Mr. Logan as Special Commissioner for investigating the grievances of the people. Mr. Logan was also asked to report on the general question of tenure of land and of tenant right in Malabar and the sufficiency or otherwise of the compensation awarded for improvements made by tenants and to offer suggestions for the remedy of any grievances which he considered well-founded. Mr. Logan submitted his report in 1882. The opinions of several officials and non-officials were invited on the matters contained in the Report. In January 1884, a Special Commission was

(a) Administration Report of the State for 1042 M. E.

appointed to advise Government as to the lines on which legislation, if any, was necessary. The Commission recommended the granting of occupancy-rights to the actual cultivators of the soil and submitted a draft bill called the Malabar Tenancy Bill revising and regulating the relations between landlord and tenant. They justified their recommendation on these grounds. "The political necessity for interference with the Jenmi's rights, we believe to exist in the grave discontent prevailing among the agricultural classes regarding the growing insecurity of their tenures; in the past that among one class of the community, agrarian discontent fanned by fanaticism, is ready to develop at any moment into agrarian outrage; and in the existence of a system of tyrannies practised by some Jenmis and apprehended from others." The Tenancy Bill was referred to the High Court for its opinion. Sir Charles Turner, the Chief Justice, severely criticised the theories of Mr. Logan and the Commission and recorded an ably written dissenting minute. The Government thereupon appointed another Committee to report on the best form of legislation possible. This Committee, after a careful consideration of the whole question, recommended that no legislation except a bill for compensation for tenant's improvements was necessary. Thus was passed Madras Act I of 1887. This Act was repealed by Act I of 1900 and its provisions re-enacted with such additions and modifications as the experience of its working shewed to be desirable and practicable. In presenting the report of the Select Committee, the Honourable Mr. H. M. (afterwards Sir Henry) Winterbotham said "Now what appears surprising to me is that the very same opinion, which is opposed to any indirect check being placed upon eviction and rack-renting by providing for the award of liberal compensation for improvements, advocates the far more drastic direct check of conferring upon the tenants the right of occupancy at a fixed rent. Thus the Hon'ble Mr. Shankara Subbayyar in his speach opposing the principle of the Bill expressed the opinion that the occupancy-right or fixity of tenure should be secured in a definite way and on a legal basis, and that if this were done all unrest will cease and the compensation scheme will fall back to its proper level and will not wear the gloomy and unwelcome look it now seems to present to

the Jenmis as a body. And again in his minute of dissent appended to the report he says: "It would be far better to let him (the tenant) continue in possession of the produce he has raised than make the Jenmi pay compensation." The answer to this, of course, is that the jenmi is not made to pay compensation unless he evicts. No tenant can claim compensation under our Bill unless and until he is evicted; and the Jenmi can refrain from eviction. I wish to draw the attention of those Honourable Members who dislike the policy of the Bill, and of my many old friends and acquaintances among the Jenmis of Malabar, to this, *viz.*, that the alternative proposed by the Hon'ble Mr. Shankara Subbayyar to accepting such indirect check on eviction as this Act may afford is to confer occupancy-rights on the tenantry. If the Malabar landlords wish that this sleeping and tremendously difficult alternative should be allowed to slumber for a further indefinite term, they should be prepared to accept, if not to welcome, the very moderate measure of protection to the tenant which this Bill afford when it becomes law" (*a*).

55. In April 1908, the Government of Cochin appointed a Commission consisting of 8 members to enquire into the tenancy conditions of the State and "submit a report embodying their recommendations as to the lines on which legislation on the subject for determining the Tenancy Laws of the State should proceed." The President and 3 members of the Commission recommended the conferring of the occupancy-right on those tenants who hold lands which have been held by themselves or their predecessors-in-interest on Kanom or otti continuously for not less than 30 years. The other members including the Chief Judge of the Chief Court were of opinion that the existing relations should not be disturbed. But all the members agreed that the compensation paid to tenants for the improvements made by them was inadequate. They suggested the passing of a Regulation on the lines of the Malabar Compensation for Tenant's Improvements Act (Madras Act I of 1900). The report of the Commission and other papers were published in February 1909

(*a*) Proceedings of the] meeting of the Madras Legislative Council dated 14th November 1899.

and any criticism which the public may have to offer invited. No final orders appear to have been passed. Thus in the Malabar District of British India and the Native State of Cochin, Kanapattom continues to be a redeemable tenure.

56. It has been said before that the proposal of the Dewan Sir. T. Madhava Rao to frame a Regulation for the speedy realisation of the Jenmi's dues was not carried out for several reasons. The absence of such a Regulation and the deprivation of the right of ouster made the position of the Jenmi an unenviable one. The Jenmi's dues were hopelessly in arrears. Repeated complaints were made to Government by the Jenmis, and the Government on enquiry found that the complaints were true (*a*). It was, however, thought that the provisions of Regulation XXIX of 1802 and V of 1822 (since repealed by the Madras Rent Recovery Act VIII of 1865) were unsuitable to the circumstances of this country.

57. There was another matter of complaint. Before the Kudiyan obtained the right of permanent occupancy, the question of renewal was not of very great importance. If the Kudiyan was unwilling to accept the terms proposed by the Jenmi and the Jenmis were powerful in that locality, the Kudiyan had to march out of the holding. But if the Kudiyans of one place were stronger than the Jenmis, then the Kudiyans imposed terms on the Jenmis. It will thus be seen that the revision of the terms of the tenancy was more a series of compromises between the parties than action on any settled principle. There could be but little uniformity in such conduct. But since the Kanapattom tenure became permanent, the Jenmi was not entitled to evict his Kudiyan if the latter refused to accept the terms proposed by the Jenmi. It became, therefore, necessary to act upon some principle in the matter of renewals of Kanapattom leases. The absence of any definite rules defining those principles made it impossible for the parties to settle their differences out of Court.

58. The course which best commended itself to Government was to appoint a Commission "to investigate and record the

(*a*) Mr. Kunhiraman Nair's Memo on Land Tenures, Part II, para 6.

custom of the country in regard to the rent and other dues payable to the Jenmis" by tenants holding lands on Kanapattom and "in regard to any presents or remission of rent made by Jenmis to tenants on occasions of domestic ceremonies and such cognate matters," with a view to a schedule being prepared for the guidance of the Courts (*a*). The late Mr. T. Kunhiraman Nair was appointed President with one official and two non-official members. The Commission was appointed in Makaram 1060. The Commission travelled throughout the country and after a prolonged enquiry framed the necessary Register of fees. They also recommended the passing of a Regulation in the interests of the Jenmis. The Register of fees prepared after so much labour has not been published by Government and the benefit of it has, therefore, been lost to the public. But the courtesy of the learned Chief Justice has enabled me to read the register and make an abstract of it for the purpose of this book.

59. But difficulties had already arisen in the working of the Royal Proclamation of 1042. Though this proclamation was made with the best of intentions and good wishes of one of the foremost of Indian Administrators it did not, in its operation, satisfy either the Jenmi or the Kudiyan. It was defective in many respects. Mr. Justice Ormsby said of this Proclamation that it was "drafted without the slightest attempt at scientific accuracy" (*b*). The Jenmi did not get anything at all for the loss of his valuable rights. There were no means of speedily recovering his dues from the tenant, for the tenant incurred forfeiture only if he was a defaulter for 12 years. The tenants complained that the Courts were putting a narrow construction upon the terms of the Proclamation and in some cases acting contrary to its provisions. A number of decisions "affirming the right of the Jenmis" (*c*) to evict their tenants "on the strength of implied covenants for surrender supposed to be contained in some Kanapattom leases executed before the year 1042" (*c*), were brought to the notice of Government as a

(*a*) Regulation I of 1060.

(*b*) See the Judgment of Ormsby, J. in *Kanakku Sivathanuvan Ammanathan* v. *Krishnan Padmanabhan*, 2. T.L.R. 58.

(*c*) Mr. Kunhiraman Nair's Memo on Land Tenures, Part II, para 10.

misconstruction of para 8 of the Proclamation. The subject was brought to the notice of the Sadr Court by Government in 1055. The Sadr Court suggested an amendment of the law expressing clearly the intentions of the Legislature, as the Courts felt difficulty in construing other paras too of the Proclamation.

60. The ground of narrow construction of the Proclamation was based on the refusal of the Courts to extend the application of the Proclamation to all classes of land owners. The Proclamation being restrictive of the rights of the Jenmis, the Courts according to the recognised rules of interpretation acted upon the technical meaning of the term "Jenmi". They held that in that sense it applied only to the Namboori Brahmins and the Devaswoms owned by them (*a*). Accordingly an Elayathu (*b*), a Kartha (*c*), a Madampy or petty chief (*d*), a Thamban (*e*), a Sudra who succeeded to the rights and properties of some old chieftain by virtue of a Royal grant (*f*), an Unni (*g*) and Devaswoms belonging to Sudras (*h*) were held not to be Jenmis within the meaning of the Proclamation. Nor was a Moothathu (*i*) or one whose title was derived from a Dewaswom a Jenmi (*j*). But the intention of the framers of the Proclamation was, as may be gathered from the preamble and the previous correspondence, to extend the benefit of its provisions to the tenants of all those Jenmis who might be considered to have been territorial lords and who, on account of their position, were not able or willing to take part in the actual cultivation of the soil.

61. The opportunity, therefore, of enacting a law to help the Jenmis in the speedy recovery of their dues was taken to place the law relating to Kanapattoms on a satisfactory footing. Mr. Kunhiraman Nair submitted a draft bill along with his Memo

(*a*) A. S. 164 of 1044; A. S. 354 of 1046; A. S. 129 of 1054 and S. A. 102 of 1045 (unreported).

(*b*) A.S. 132 of 1052 (unreported).

(*c*) *Avirá varki* v. *Nilakantan Govindan Karthavu*, 1. T.L.R. 2.

(*d*) A.S. 57 of 1052 (unreported).

(*e*) A.S. 274 of 1049 (unreported).

(*f*) *Raman Krishnan* v. *Madhavan Sankaran*, 7. T.L.R. 93.

(*g*) *Kesavaru* v. *Padmanabhan*, 18. T.L.R. 185.

(*h*) *Nârayanan Govindan* v. *Krishan Narayanan*. 8 T. L. R. 76.

(*i*) S.A. 307 of 1074 (unreported).

(*j*) *Narayanan Vasudevan Elayathu* v. *Kesavan Kesavan* 2 T.L.R. 57.

on the matters referred to the Commission mentioned in para 58. The bill which ultimately became the Regulation now in force was introduced into the Legislative Council on 15th April 1890 by the late Mr. P. Thanoo Pillay. It was immediately referred to a Select Committee consisting of Messrs. Shungra Soobier, T. Raja Rama Rao, T. Vedadrisadasa Mudaliar, Kavalam Neelacanda Pillay and the mover. But owing to changes among the members of the Council, the Select Committee was, on 21st September 1891, re-constituted and consisted of Messrs. Shungra Soobier, K. Krishnaswamy Rao, P. Thanoo Pillay and E. Ramier, and they were requested to submit their report within 6 months. As the work was heavy and exacting the Select Committee applied for and obtained extensions of time. The Jenmis and Kudiyans sent several memorials and petitions to the Council setting forth their grievances and wants. The Select Committee considered them all and submitted their report on 18th January 1894. The Bill was taken up for consideration at the meeting of the Council held on 21st July 1894, but as the Jenmis and tenants had applied for permission to personally represent their grievances and as their application seemed reasonable, the consideration of the Bill was postponed to 4th August 1894. On that day advantage was taken of the presence of some of the Jenmis to consult them with regard to the various points urged by them in their memorials. The tenants who were present were also heard by the Council. The Bill was finally considered by the Council on the 12th December 1894 and the succeeding days and passed into law as Regulation V of 1071.

62. This Regulation, unlike the Proclamation which it superseded, deals exhaustively with the subject of Kanapattoms. The Kudiyans (Kanapattom tenants) of all Jenmis are given a right of permanent occupancy, but where the Jenmis are non-Brahmins the Kudiyans must have held the land for at least 25 years (Sec. 5). This Regulation, however, does not affect any right declared, established or already acquired by Jenmis or Kudiyans before the date of this Regulation (Sec. 44). The Jenmis are at liberty to enter into any contracts with respect to their lands and the question of the redeemability of a tenure created hereafter will be determined according to the terms of

the contract between the parties (Sec. 43). Nor does this Regulation affect any tenures redeemable under the provisions of the Royal Proclamation of 1042 (Sec. 42). The contracts of Kanapattom should be in writing and registered and the deed must contain all the terms (Sec. 15). Any variation of those terms should also be in writing and registered (Sec. 20). The Kudiyan's right is heritable and transferable but *a portion of the holding* may be transferred only with the written consent of the Jenmi (Sec. 6). The grounds of forfeiture have been specified (Sec. 7) and the Kudiyan will be paid the value of the improvements effected by him when evicted. The Jenmi's dues continue to be a charge on the holding (Sec. 13) and must be paid on the due dates (Sec. 17). The Kanapattoms should be renewed at the end of every 12 years and the obligation to do so is mutual (Secs. 11 and 18) but the Kudiyan may at that time surrender his holding (Sec. 12). The mode of enhancement of Michavarom is laid down by Section 14 and the grounds on which the Courts will allow such enhancement are given in Section 21. The principles of revision of the terms of the tenancy are given in Sections 22—25. Chapter III, Part B (Secs. 27—32) allow the Kudiyan to deposit the Jenmi's dues in Court. Sections 33—40, which are new, allow the Jenmi to recover his dues summarily. This Regulation also settles two other important questions. The validity of transfers of Jenmom lands was doubted but it has been laid down that sales of the Jenmi's rights are valid (Sec. 4). When such alienations took place, the Sirkar enhanced the tax on the property. It was doubtful who should pay the newly imposed tax. This Regulation makes it payable by the transferee (Sec. 4). Again, the Jenmom right may be transferred to a non-Brahmin or a non-Hindu. In such cases it would be impossible to ascertain when the customary dues were to be paid. This Regulation gives the Kudiyan, on such transfer taking place, the right to call upon the transferee to commute the customary dues into fixed annual payment (Sec. 26).

63. This Regulation has now been in force for more than 12 years and has not been found to be materially defective. Under the provisions of the Royal Proclamation of 1042 and this Regulation, almost all the Kanapattoms in the country must

have, during the last 45 years, been either voluntarily renewed or the terms thereof settled by suit. Serious disputes as to the terms of the tenancy cannot, therefore, arise in future. The disputes of the future will be about the enhancement of Michavaram. The Jenmis, however, still regret the deprivation of their valuable rights and this regret seems only natural seeing that they got nothing for their loss. A mode for speedily recovering their dues was what was proposed to be given them in exchange for the loss of the right of ouster. But they had to wait 30 years before they got it. The risk of forfeiture was, however, further put off by sections 9 and 10 of this Regulation.

64. A few Jenmis who happened to be members of the third Session of the Sree Mulam Popular Assembly prayed for amending the Regulation embodying the existing practice in Cochin and British Malabar. The Government, however, then declined to interfere on the ground that the Regulation had only been recently passed.

65. The Kudiyans too do not seem to be satisfied with the law as it is and have begun to demand changes in their favour. It will be remembered that in 1005, 1042 and 1071, their grievances were favourably considered by Government and as nothing succeeds like success, they cry for more favours. But their present grievances are not so just or serious as those of 45 years ago. At the fourth and fifth Sessions of the Sree Mulam Popular Assembly the various grievances of the Kudiyan were brought to the notice of Government. They were

(i) the Regulation was defective in that it did not define the rights and liabilities of either party; nor did it record the custom of the country in regard to the proprietary dues payable to the Jenmi (*a*).

(ii) section 8 of the Regulation which did not give the Kudiyan the wild trees of spontaneous growth standing on the holding was hard and unjust (*a*).

(iii) whereas increase of Pattom was allowed on account of increased productiveness of land, no abatement of Pattom was allowed in cases of diminution of produce (*a*).

(*a*) See the Proceedings of the Fourth Meeting of the Sree Mulam Popular Assembly held on the 18th November 1907 and the following days.

(iv) The renewals of Kanapattom were granted as best suited the Jenmi's interests(*a*).

(v) The interest on the Kanom allowed to the Kudiyan was very low while he was paying a very high rate on the Jenmi's dues(*a*).

(vi) The Michavaram due to the Jenmi should be commuted into money at the rate of 11 chs. per parah(*a*).

(vii) The claims for arrears of Michavaram for more than three years should be made unenforcible(*a*).

(viii) Olappanam and all customary dues should be abolished(*a*).

(ix) When the holding is acquired by Government three-fourths of the price of the ground should be given to the Kudiyan. (*a*).

(x) The Kudiyan should be allowed the right to demand a remission of the rent due on the land in cases of partial or total failure of crops(*a*).

(xi) The Kudiyan should be allowed to split up the holding without the consent of the Jenmi(*a*).

(xii) The Kudiyan should be compelled to take only one document for all properties of the same class belonging to the same Jenmi(*a*).

(xiii) The renewals should be permitted only once in 30 years(*b*).

66. These suggestions for the amendment of the Regulation are all in favour of the Kudiyans. The Government being of opinion that the Jenmis of Travancore were worse off than their brethren in Cochin and British Malabar and that several of the suggestions "practically amount to a confiscation" of the Jenmi's rights, declined to legislate on the lines proposed. In this opinion the Government was supported by the High Court(*b*).

67. At the sixth and the seventh Sessions of the Assembly the representatives of the Jenmis repeated their prayer to amend the Regulation for safeguarding their interests. The Kudiyans too did not allow the grass to grow under their feet. In reply to

(*a*) See the Proceedings of the Fourth Meeting of the Sree Mulam Popular Assembly held on the 18th November 1907 and the following days.

(*b*) See the Proceedings of the Fifth meeting of the Sree Mulam Popular Assembly held on the 9th November 1908 and the following days.

the prayers of the representatives of the sixth Assembly the Dewan said that the Government considered that the time had come when an inquiry might be made into the working of the Regulation and promised to take action to make such inquiry.

68. The amendments suggested by the several members at successive Sessions of the Assembly, were referred to the High Court and the Division Peishkars for an expression of their views. On receipt of their replies, the Government passed the following order. "His Highness' Government have very carefully considered every one of the amendments suggested by the Members, as also the views of the Peishkars and of the late Chief Justice, Mr. T. Sadasiva Iyer. The above mentioned officers have expressed themselves as against almost all the amendments, for the reason that, while those proposed by the Jenmis are patently inequitable to the Kudiyans, those desired by the latter are equally unfair to the Jenmies. The Government agree in this opinion and consider that no change in the Jenmi and Kudiyan Regulation is now called for " (*a*).

(*a*) G. O. No. J, 3485, dated 23rd July 1911.

BOOKS CONSULTED AND REFERRED TO

(1) Mr. Kunhiraman Nair's Memo on Land Tenures.

(2) The Report of the Jenmi and Tenant Commission.

(3) Revenue Handbook of Travancore by Mr. M. R. Krishna Rao.

(4) Mr. Ramiengar's Settlement Memorandum.

(5) Sir T. Madhava Rao's Memo on the relation between Jenmi and Kudiyan.

(6) The Administration Report of Travancore for 1041 and 1042.

(7) Mr. Sadasivan Pillay's Memo on the relation between Jenmis and Kudiyans.

(8) Proceedings of the Madras Legislative Council, dated 14th November, 1899.

(9) Proceedings of the 3rd, 4th and 5th Meetings of the Sree Mulam Popular Assembly.

(10) Report of the Jenmi and Tenant Commission of Cochin.

(11) Malabar compensation for Tenants Improvements Act by Mr. A. V. Govinda Menon.

(12) Gazetteer of the Malabar and Anjengo Districts by Mr. Innes (1908).

ERRATA.

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71	22	,,	Kanapatam.	,,	Kanapattom.
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76	28	,,	Adukkavathoo	,,	Adukkuvathoo.
83	13	,,	practice abolished	,,	practice was abolished.
85	9	,,	supercession	,,	supersession.
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A. S. Appeal suit.

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THE
JENMI AND KUDIYAN
REGULATION.
V OF 1071.

Passed by His Highness the Maha Rajah of Travancore on the $\frac{\textit{3rd July 1896.}}{\textit{21st Mithunom 1071.}}$

A Regulation to define clearly the relative rights of Jenmis and Kudiyans and to make provision for the speedy realisation of Michavarom and other proprietary dues from the Tenants.

Preamble.

Whereas it is expedient for better carrying out the intention of the Royal Proclamation of the 25th Karkadakom 1042, to define clearly the relative rights of Jenmis and Kudiyans in Travancore, to make further provision for the speedy realisation of Michavarom and other customary proprietary dues and to invest the District Munsiffs and Zillah Judges with summary jurisdiction in petty claims for Michavarom and other dues;

We are, in supersession of the Royal Proclamation above referred to, hereby pleased to enact as follows :—

Notes. The first instance of interference by the Legislature with the customary law which till then regulated the rights of Jenmis and Kudiyans, is contained in the Royal Communications of 25th Vrichigom 1005 and 14th Thulam 1007. These commands were issued to the Appeal Court under the

orders of the then Maha Rajah and directed that the Courts were to maintain the established usage in the country, *viz.*, that the Kudiyan should pay the Jenmi his usual, ordinary and extraordinary dues and the Jenmi receive the same and let the Kudiyan remain in possession and enjoyment of the property. The interference was only with the right of ouster till then enjoyed by the Jenmi. In less than 40 years a second interference became necessary and the Royal Proclamation of 25th Karkadagom 1042 was the result. The object of this Proclamation was "to re-affirm and render clear the sentiments expressed in the Communications of 25th Vrichigom 1005 and 14th Thulam 1007 and to give them effect in a way equitable" to the Jenmis and Kudiyans. The Proclamation, like the Commands which preceded it, dealt only with the right of ouster. The other rights and liabilities of the parties were left to be regulated by the customary law. Practical difficulties in the working of the Proclamation soon became evident. For better carrying out "the intention of the Royal Proclamation of the 25th Karkadagom 1042," the Legislature thought it expedient "to define clearly the relative rights of Jenmis and Kudiyans" and to make further provision for the speedy realisation of the Jenmi's dues. This Regulation is the outcome of that desire. The relative rights of Jenmis and Kudiyans are defined in Chapter II and Chapter III Part A. There can be no doubt that this Regulation is an improvement upon the old Proclamation. After the 1st day of Makaram 1072, the customary law which regulated the rights of the parties till then is superseded by this Regulation except to the extent saved by Section 2. Another improvement is the provision by which the Jenmi is enabled to recover his dues speedily. This was not provided for by the Royal Proclamation of 1042.

CHAPTER I.

PRELIMINARY.

Short title.

I. (1) This Regulation may be called the "Travancore Jenmi and Kudiyan Regulation of 1071."

Commencement.

(2) It shall come into force throughout Travancore on the first day of Makarom 1072.

Provided that para 2 of section 5 and the 1st para of section 44 shall come into force on the first day of Chingom 1074.

Notes. The object of this Regulation and the Proclamation which it supersedes is to confer fixity of tenure on *kanapattom* tenants. Other classes of tenants holding under the Jenmis were not intended to be affected by the Proclamation or this Regulation(*a*). And this Regulation does not affect any right declared, established or already acquired by Jenmis or Kudiyans at the date this Regulation comes into force (*b*).

Saving of custom and customary rights.

2. Nothing in this Regulation shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by, its provisions.

Notes. This Regulation is intended to define clearly the relative rights of Jenmis and Kudiyans. It is believed that no important right has been omitted but it is not pretended that this Regulation is exhaustive. This section is intended to guard against its being supposed that no custom or customary right, not expressly recognised by this Regulation, will be given effect to by the Courts. Customs not modified or abolished by this Regulation do exist, but only such of them as are not inconsistent with this Regulation will be recognised by the Courts when proved. A custom not inconsistent with the provisions of this Regulation and not expressly or by necessary implication abolished thereby is found in *Raman Bhattathiripad* v. *Avira Varki* (*c*). The Jenmi's right to cut valuable timber trees from the holding even though such trees were planted by the Kudiyan was recognised in that case. Another such custom is the one

(*a*) *See* the notes under Section 5.
(*b*) *See* Section 44, para 2.
(*c*) 18 T. L. R. 95.

under which a Jenmi or mortgagor is not entitled to recover or redeem paddy lands except at the end of the agricultural year, that is, before the commencement of the month of *Medom* (April-May) (*a*).

Interpretation-clause.

3. The following expressions shall have the meanings hereby assigned to them unless there is something repugnant in the subject or context.

Notes. In construing a special Regulation, the definitions as used in that Regulation must be resorted to and not the definitions in the General Clauses Regulation (*b*).

"Jenmom land."

(1) "Jenmom land" means land (other than Pandaravagay, Sreepandaravagay, Kundukrishi or Sircar Devaswom land, recognised as such in the Sircar accounts) which is either entirely exempt from Government tax or if assessed to public revenue, is subject to Rajabhogam only, and the occupancy right in which is created for a money consideration (Kanom) and is also subject to the payment of michavarom or customary dues and the periodical renewal of the right on payment of renewal fees.

Explanation—Rajabhogam includes Rajabhogam paid to a Chief within whose free-hold estate the land is situate.

Notes. The term "jenmom land" is defined in accordance with its old meaning. (i) The land (not being Pandaravagai, Sreepandaravagai, Kandukrishi or Devaswom land, recognised as such in the Sirkar accounts) should be either entirely exempt from Government tax or be subject to *Rajabhogam* only and (ii) the occupancy right in that land must be one (*a*)

(*a*) Select Decisions of the Travancore Sadr Court, by P. Govinda Pillay, pages 1 and 2.

(*b*) *Raman Bhattathirpad* v. *Avira Varki*, 18 T. R. 95.

created for a money consideration, (*b*) capable of periodical renewal on payment of renewal fees and (*c*) subject to the payment of michavarom or customary dues. The first part of the definition would apply to *all lands* owned by the Jenmis whether Brahmin, Non-Brahmin or the Devaswoms. This is the popular definition. The second part, however, is additional and not alternative to the first part and restricts such extensive application. The second part confines the application of the definition to *such of those lands as are demised on the conditions given in that part.* These terms have, from very ancient times, been those of what is now called a *kanapattom* tenure. The definition, therefore, applies only to those lands as are demised on *kanapattom.* Lands in the possession of Venpattom tenants, or held on improving leases or in the possession of usufructuary mortgagees are not included in the definition of "Jenmom land." The jenmom lands are entered in the Sirkar accounts as the *vakai* or *thettom* of the Jenmi. Though the literal meaning of the word *thettom* is "acquisition" the term when used with reference to Jenmi's lands held by non-Jenmis, generally means a *kanapattom* (*a*) Properties entered in the Sirkar accounts as *kudipully thanathu* are lands belonging to a Jenmi and, therefore, lightly taxed (*b*). If the occupancy right in such lands is created for a money consideration they are "jenmom lands" as defined in this Regulation (*c*). The lands held by a Jenmi on *kanapattom* from another Jenmi is not the "jenmom land" of the former but only of the latter. The former Jenmi cannot, therefore, demise the lands again on *kanapattom* to another. It will only be a mortgage of his permanent occupancy right as kudiyan (*d*). A property entered in the Sirkar accounts as "Pandaravagai kudijenmom of jenmi A—registered in the name of—" is not jenmom land within this definition (*e*). A *Pandarapattom* land belonging to a Jenmi though demised in the form usually adopted for *kanapattom* deeds

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(*a*) *Purushothaman Narayanan Numburipad* v. *Kanakku Govindan Ayappan*, 15 T.L.R. 161.

(*b*) A. S. 327 of 1082 (unreported).

(*c*) A. S. 141 of 1076 (unreported).

(*d*) *Kumararu* v. *Kuttala Iyen*, 19 T.L.R. 21 and A.S. 174 of 1076 (unreported).

(*e*) *Narayanan* v. *Thrivikramaru*, 19 T.L.R. 47.

is not "jenmom land" within the meaning of this definition (*a*). But, on the ground of estoppel, a Jenmi(*b*), or a Kudiyan(*c*) may be precluded from setting up the plea of the land being *Pandaravagai* and thus be compelled to give or take a renewal of the *kanapattom*. But, as the estoppel by representation on the part of the jenmi as to the character of irredeemability was not present at the inception of *kanapattom* transactions but was attached by subsequent legislation, it has been held that it would be applicable only in the case of those who were known as Proclamation Jenmis. Thus, where a non-Brahmin Jenmi sued for redemption of *Pandarapattom* lands demised on *kanapattom* along with *kudipullythanathu* lands before para 2 of section 5 of this Regulation came into force, it was held that there was no estoppel (*d*).

Explanation.—For an instance where *Rajabhogam* is paid to a Chief, see *Raman Narayanan Numburipad* v. *Chothi Thirunal* (*e*).

"Jenmi."

(2) "Jenmi" means a person in whom the proprietary right over Jenmom lands is vested and includes, in the case of Devaswoms owning Jenmom lands, the managing Trustee or Trustees of the Institution for the time being.

Notes. The framers of the Royal Proclamation of 1042 intended to include within its scope all "aristocratic and non-cultivating classes of proprietors, who, in the opinion of the Government of the day, have, for a long time past, not been in the habit of evicting their Kudiyans so long as the latter paid their rents and dues punctually" (*f*). But as the Proclamation did not define the term "Jenmi" and as this term had acquired a technical meaning, the Courts interpreted it in that sense. In this sense, it applied only to a limited class of land owners, *i.e.*, the Brahmins and the Devaswoms (*g*). The

(*a*) A. S. 324 of 1077 (unreported).
(*b*) A. S. 140 and 249 of 1080 (unreported).
(*c*) *Narayanan* v. *Thrivikramaru*, 19 T.L.R. 47.
(*d*) A.S. 204 of 1080 (unreported).
(*e*) 16 T.L.R. 19.
(*f*) Report of Jenmi and Tenant Commission, para 18.
(*g*) *See* introduction, para 60.

Jenmi and Tenant Commission recommended that the term may be conveniently extended to Edavagais and Swaroopams of non-Brahmin Jenmis also. The draft Bill accepted this recommendation(*a*) which was also retained in the Bill by the Select Committee (*b*). The definition, in its present shape, was adopted during the discussion of the Bill in the Council. It sweeps away all previous restrictions and includes within its scope all persons, of whatever caste, in whom the proprietary right over "jenmom lands" is vested. It will also include the transferee—whether in Court auction or by private sale—of the Jenmi (*c*). But a permanent tenant of "jenmom lands," is not a "jenmi" under this Regulation with respect to the holders of that land under him (*d*). Hence, if a person who is not a "jenmi" executes a document satisfying all the essentials of a *kanapattom* deed, such a deed will not give the transferee a right of permament occupancy but only a right to hold the land for 12 years (*e*).

"Kudiyan."

(3) "Kudiyan" means a person who holds lands on kanapattom tenure.

Notes. The object of the Regulation being to confer fixity of tenure on *kanapattom* tenants the term "kudiyan" includes only tenants holding lands on *kanapattom* tenure.

"Kanapattom."

(4) "Kanapattom" means a demise of Jenmom land made or renewed by the Jenmi by whatever name such demise is designated.

Notes. Every document executed by a Jenmi for the lands he owns is not a *kanapattom*. The law does not forbid the

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(*a*) Sec. 3, cl. 1 (*e*) of the draft bill.

(*b*) Sec. 3, cl. 1 (*e*) of the bill as amended by the Select Committee.

(*c*) *See* sections 4 and 26.

(*d*) *Kumararu* v. *Kuttala Iyen*, 19 T.L.R. 21 and A.S. 174 of 1076 (unreported).

(*e*) *Narayanan Kerala Varman Thirumulpad* v. *Kumaran Krishnan*, 10 T.L.R. 42 and *Kumararu* v. *Kuttala Iyen*, 19 T.L.R. 21.

Jenmi from executing a simple mortgage (*a*), and in the absence of the characteristics of *kanapattoms*, such must be taken to be the transaction (*b*). A mortgage executed by a Malayali Brahmin Jenmi in 1057 reserving an annual *michavarom* but under which no renewal fees or customary dues were paid is not a *kanapattom* (*c*). The payment of michavarom alone under a *Pattaola* document executed by a Sudra Jenmi will not, in the absence of other distinguishing features, make the transaction a *kanapattom* (*d*). A *kanapattom* in British India is treated as a lease or a mortgage according to the object for which the tenure was created. It is thus a tenure of a mixed character (*e*). The tenure had the same characteristics in this country until the Royal Proclamation of 25th Karkadagom 1042, which had the effect of converting it into a sort of perpetual lease determinable only in certain events (*f*).

The essentials of a *kanapattom* have been mentioned under clause (1) above. A *kanapattom* is defined to be a demise (*i.e.*, a conveyance of an estate by lease) of jenmom land. For the definition of "jenmom land," see clause (1) above. It is not a lease of every land belonging to a Jenmi that will be construed to be a *kanapattom*. The land must be of the description given in the first part of the definition of "jenmom land." The terms of the lease, must be those given in the second part of that definition. Thus the two terms "Kanapattom" and "jenmom land" are closely connected. The land not being Pandaravagai, &c., should be either wholly exempt from Government tax or be subject to *Rajabhogam* only. This will happen only in the case of land owned by Jenmis. The land should be alienated, for a money consideration. The terms of the document should provide for the payment of *michavarom* and customary dues to the Jenmi

(*a*) *Manian Mamaroo* v. *Krishnan Neelan*, 6 T.L.R. 10, followed in *Narayanan Krishnan* v. *Mathevan Narayanan*, 12 T.L.R. 90 and *Sivakami Lakshmi Ammal* v. *Narayana Iyen Janardana Iyen*, I.U.T.D., Vol. I, page 73.

(*b*) A.S. 237 of 1078 (unreported).

(*c*) *Sivakami Lakshmi Ammal* v. *Narayana Iyen Janardana Iyen*, I.U.T.D., Vol. I, page 73.

(*d*) S.A. 115 of 1079 (unreported).

(*e*) I.L.R. 3 Madras 382.

(*f*) *Vasudevan Raman Numburipad* v. *Nilakantan Madevan Numbury*, 2 T.L.R. 49.

and should also provide for the renewal of the occupancy right on payment of renewal fees. All these conditions being satisfied, the land would be known as "jenmom land" and the alienation a "Kanapattom" (*a*). A mortgage-deed providing for the payment of *michavarom* alone and under which no customary dues or renewal fees were paid is not a *kanapattom* deed but is redeemable (*b*).

As section 5 of this Regulation confers a right of permanent occupancy on kudiyans, the question whether a document is a kanapattom or not is of very great importance. After the date of this Regulation, no difficulties can arise, as Sec. 15 empowers Registering officers to refuse to accept for registration documents which do not contain the particulars set forth in that section. But in the case of documents executed before the date of this Regulation difficulties may arise.

It has been mentioned before that kanapattoms were originally leases with security or usufructuary mortgages and that later on the Jenmis, on account of their pressing needs, became willing to renew these deeds in favour of tenants who were prepared to pay the renewal fees, &c., (*c*). There were thus many documents which though called *otti*, &c., were really Kanapattoms. The recital of the word "otti" in a Vilengiper with regard to a property of a Jenmi did not, however, necessarily shew that the demise was a Kanapattom (*d*). There were certain distinguishing features peculiar to this tenure and if they existed the Royal Proclamation made them irredeemable though the documents under which the lands were held went by a different name. Sometimes it was impossible to prove all the material incidents of the tenure and, therefore, the Courts presumed that *otti* deeds executed in olden days by Proclamation Jenmis (*i.e.*, the Brahmins and Devaswoms) must, in the absence of evidence to the contrary, be irredeemable, *i.e.*, a renewable one subject to the incidents of the Royal Proclamation. But the presumption was

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(*a*) S.A. 155 of 1083 (unreported).

(*b*) *Sivakami Lakshmi Ammal* v. *Narayana Iyen Janardana Iyen*, I.U.T.D. Vol. I, page 73.

(*c*) *See* Introduction, para 22.

(*d*) S. A. 146 of 1075 (unreported).

a rebuttable one (*a*). The burden of proving that the *otti* did not amount to a *kanapattom* in such cases, was laid on the party making the assertion (*b*). The provision for payment of compensation for improvements in case of eviction is insufficient to convert the tenure into a simple mortgage redeemable at the will of the Jenmi (*c*). But where the *otti* is not to a man of the cultivating class who generally took *kanapattom* leases in olden days or where no renewal fees—which have been held to be a a distinguishing feature of the *kanapattom* tenure—were paid or claimed, there is strong evidence to rebut the presumption of the tenure being a *kanapattom*. Where there is such evidence to rebut the presumption, the mere fact of the entry in the Revenue accounts of the tenure being *otti* is insufficient to shew that the demise was a *kanapattom* (*d*).

The receipt of *Adukkuvathoo* by the Jenmi is a distinguishing feature of kanapattoms. If in executing a mortgage or lease, the Jenmi receives this fee or has received it and allowed the mortgagee or lessee to hold the property for another term, then the character of irredeemability attaches to the mortgage or lease (*e*). But the mere fact that a document has been renewed on payment of renewal fees will not make that document a Kanapattom and hence irredeemable. A Kanapattom lease granted by a non-Jenmi is redeemable (*f*). In Sherthalai, for example, there are several land-holders who, though not Jenmis, are in the habit of mortgaging their lands and receiving *Adukkuvathoo*. If land-holders of this class are proved to have received the *Adukkuvathoo*, they are at most bound to allow the mortgagee to hold the property for a period of 12 years from that date. Thus, from the single circumstance of payment of *Adukkuvathoo*, the inference

(*a*) *Vasudevan Sankaran Bhattathiri* v. *Sankaran Devan Potti*, 16 T.L.R. 145. *See* also *Sankaran Numbury Chitran Adithiri* v. *Raman Bhagavathy*, 16 T.L.R. 168.

(*b*) S.A. 275 of 1075 (unreported).

(*c*) S.A. 157 of 1075 (unreported).

(*d*) *Vasudevan Sankaran Bhattathiri* v. *Sankaran Devan Potti* 16 T.L.R. 145.

(*e*) *Dharmaraja Iyen Vydianatha Iyen* v. *Kuvakkara Narayanan Sankaran*, 3 T.L.R. 27 and S.A. 394 of 1085 (unreported).

(*f*) *Narayanan Kerala Varman Thirumulpad* v. *Kumaran Krishnan*, T.L.R. 42.

does not legitimately follow that the mortgage is irredeemable (*a*). The provision in the document for payment, besides the fixed rent or *michavarom*, of certain customary dues such as contributions for *Aradiyanthram* and the like, to the Jenmi is another characteristic of an irredeemable Kanapattom (*b*); but a deed not reciting renewal fees or customary dues is not necessarily redeemable (*c*). These fees and dues, though not recited in the deed, may be proved by other evidence to have been paid (*d*). The use of the expression *Kalam Moovandu* is generally another distinguishing mark of Kanapattoms (*b*). The expression is sometimes used in another form, *Kalam Orandal Moovandekku* but in the same sense (*e*).

The term *Patta Ola* is synonymous with *Kanapattom* and imports a lease or pattom for the usual period of 12 years (*e*). Where the land included in a document was subject to *Rajabhogam* and the occupancy right over it was created for a money consideration (Kanom) and, where the document provided for the periodical payment of *Thiruvathirapalam* and *Onakalcha* and where *Adukkuvathoo* and *Oppusoochi* were found to have been paid by the tenant under that document, it was held that the tenure was a *Kanapattom* (*d*).

The insertion of a clause in the deed that the Jenmi was to realise the rent from the premium is not inconsistent with a Kanapattom (*f*).

A Jenmi executed a simple lease to a tenant and also executed in his favour a bond to secure a loan made by him. The understanding between the parties was that the interest due under the bond was to be paid out of the rent reserved in the lease. The Court held that the bond and the lease together did not amount to a *kanapattom* and that the conduct of the parties clearly shewed that they did not intend to create one.

(*a*) A. S. 140 and 249 of 1080 (unreported).

(*b*) *Manian Mamaroo* v. *Krishnan Neelan*, 6 T. L. R. 10.

(*c*) A. S. 297 of 1074 (unreported).

(*d*) A. S. 129 of 1083 (unreported).

(*e*) *Narayanan Govinda Kymal* v. *Koyakutty Andukai*, 14 T. L. R. 69 followed in A. S. 15 of 1080 (unreported).

(*f*) *Itoop* v. *Sridharan Numburipad*, 17 T. L. R. 149.

The Jenmis have been, for ages past, resorting to this expedient of executing *Venpattom* and *Kadamuri* deeds separately in order to take the case out of the law relating to *Kanapattoms*, and there is nothing illegal in their dealing with their lands in any manner they think fit provided they do not interfere with occupancy rights previously acquired by tenants (*a*). This ruling follows the current of decisions of the late Sadr Court and the High Court (*b*). It has also been uniformly followed (*c*).

"Kanom."

(5) "Kanom" means the Arthom or consideration (in money or in kind) paid for the kanapattom and shall also include the value of improvements made by Kudiyans and treated as Arthom or consideration.

Notes. Where under the terms of a *puravaippa* the loans covered by it became part of the *Kanom* only when the *Kanapottom* was renewed, the Jenmi cannot claim renewal fees on the *puravaippa* amount at the first renewal after the execution of the *puravaippa* deed (*d*).

Kauly Pillay Aundy Pillay v. *Padmanabhan Kuttiparu Antherjenom* (*e*) was a suit brought by a Jenmi for renewal of a *Kanapattom*. The Kudiyan claimed compensation in respect of some permanent works done by him on the holding in the shape of improvements. The Munsiff found this claim true and directed by his decree that this sum should be added to the old *Kanom* in the renewal deed to be taken by the Kudiyan. The Kudiyan did not object to this portion of the decree in the appeal preferred by him to the District Court but urged it in Special appeal. The High Court, while dismissing the Special appeal on this ground, remarked that "there is much force in the special appellant's contention, as the ruling recited by the Munsiff (*f*) and clause (4) of section 7 of the Jenmi and Kudiyan Regulation do not seem to contemplate the addition of

(*a*) *Mathu Thomman* v. *Thathar Jeyanthar*, 10 T. L. R. 52.

(*b*) Select Decisions of the Travancore Sadr Court, by Govinda Pillay, Part I, page 24; A. S. 297 and 298 of 1064.

(c) A. S. 251 of 1076 and A. S. 107 of 1083.

(*d*) S. A. 260 of 1074 (unreported).

(*e*) I. U. T. D. Vol. I, page 87.

(*f*) *Vishnu Easwaran* v. *Narayanan Thrivikramaru*, 14 T.L.R. 23.

the value of improvements to the old Kanom so as to increase the future burden of the tenant." These remarks are mere *obiter dicta* and are against the clear provisions of this clause and Sec. 21, clause (2).

"To hold land."

(6) A person is said " to hold land " whether he retains it in his actual possession or whether he mortgages or sub-lets it; and a person shall be deemed to have held land if it has been held by himself or by a predecessor in interest or title through whom he claims.

" Holding."

(7) " Holding " means a parcel of land or parcels of land held under one kanapattom instrument and one set of conditions.

Notes. The definition of this term shews that it includes only the land and not the trees standing thereon (*a*).

" Sub-tenant."

(8) "Sub-tenant" means any person who holds land under a Kudiyan.

Notes. For example, a mortgagee or lessee of the Kudiyan. In the absence of privity of contract the Kudiyan alone is liable for the *michavarom* and not his tenant or mortgagee (*b*); for, a sub-lease or mortgage differs from an assignment in that it creates no privity of contract between the sub-tenant and the Jenmi. The Jenmi has to deal with his lessee and not the sub-tenant of the latter. Both " privity of contract " and " privity of estate " subsist only between the lessor (and his heirs) and the lessee (and his heirs). " The privity of estate " alone subsists between the lessor's assignees of *the whole estate* and the lessee's assignees of the whole term (*c*). The sub-tenant is only liable to the lessee and not to the Jenmi. The latter has no cause of action for rent against the sub-tenant (*d*). The sub-tenant has not

(*a*) *Raman Bhattathiripad* v. *Avira Varki*, 18 T.L.R. 95, at page 101.

(*b*) S.A. 322 of 1073 (unreported).

(*c*) *Parameswaran Nilakantan* v. *Kuthiraru Subramaniaru Numburipad* I.U.T.D., Vol. II, page 536.

(*d*) S.A. 230 of 1079 (unreported).

the same rights as the *Kudiyan* and cannot demand to be treated as the *Kudiyan* by the Jenmi. The sub-tenant cannot, for example, raise any contention regarding the enhancement of rent in an appeal against a decree which on that point is only against the Kudiyan (*a*); nor can he dispute the Jenmi's right to take a renewal (*b*).

The legal incidents of a *Kanapattom* as to renewal do not attach to sub-kanoms which can only be regarded as mortgages created by the *Kudiyan* (*c*).

"Pattom."

(9) "Pattom" means the assessed rent of the holding prior to the deduction of interest due to the Kudiyan on the Kanom in order to determine the Michavarom due to the Jenmi.

Michavarom.

(10) "Michavarom" means the residual rent which is payable or deliverable annually under a kanapattom by the Kudiyan to the Jenmi whether in money or in kind and includes services due in lieu of rent.

"Renewal fees."

(11) "Renewal fees" means the fee or fees payable on renewal of Kanapattom, under such denominations as Adukuvathu, Avakasom, Sakshi, Oppu Thusi, Olappanam, Thirunalkalcha, and the like.

Notes. These fees are not all of them leviable at the same time. The practice varies in different localities and with the several Jenmis.

(i). *Adukkavathoo*, *Avakasom* and *Sakshi* are the various names under which the premium for the renewal of the lease is known. *Sakshi* was claimed when the assignee of a *Kudiyan*

(*a*) *Kuncheriya* v. *Mathan*, 18 T.L.R. 161.
(*b*) A.S. 226 of 1075 and A.S. 2 and 5 of 1076 (unreported).
(*c*) *Kumararu* v. *Kuttala Iyen*, 19 T.L.R. 21 and (*a*).

had to attorn to the Jenmi in respect of the holding (*a*). At such transfers the Jenmi claimed a reduction of the debt. The *Avakasom* was a similar reduction of the debt at the time of renewal. Fines at the transfer of a holding are not now claimed by the Jenmis throughout the State.

The *Adukkuvathoo* fee is generally calculated at a certain percentage of the *Kanom*. It is also calculated in certain places upon the sowing capacity of the lands or the amount of jenmi pattom, but such instances are rare. In the absence of any express stipulation in a *Kanapattom* deed regarding the payment or otherwise of renewal fees on the *Ettartham* or additional kanom recited therein, the customary incidents of renewal must attach to the whole *kanom* including the *Ettartham* for all future renewals (*b*). The rate of this fee depends upon the understanding between the jenmi and tenant, *i.e.*, it is a matter of contract and, therefore, a question of fact (*c*). The rate varied in different localities from 10 to 20 p. c. But it is well known that as the lands became dearer since 1030 M. E. owing to the rise in the prices of the different kinds of staple produce and the keen competition among agriculturists for cultivable lands the Jenmis have been increasing their claim for *Adukkuvathoo*. And if it is shewn that the Jenmis have, in the altered circumstances of the country, been levying *Adukkuvathoo* at a higher rate than formerly, the Courts will award such higher rate (*d*). The rate of *Adukhuvathoo* also varied in regard to old and new advances. But a uniform rate of 20 p. c. on old as well as new *kanom* is now generally awarded (*e*).

Adukkuvathoo fees are leviable at the customary rate prevailing in the locality and not according to the custom prevailing in the *Illom* of the Jenmi (*a*).

(ii). *Opputhoosi* and *Olappanam*. The origin of these fees is the cost of preparing and executing the *kanapattom* deeds.

(*a*) *Ouseph Chacko* v. *Jeyanthan Jeyantharu*, I.U.T.D. Vol. I, page 77.
(*b*) *Vishnu Easwaran* v. *Narayanan Thrivikramaru*, 14 T. L. R. 23.
(*c*) S. A. 260 of 73 (unreported).
(*d*) *Nanaka Pillay Veloo Pillay* v. *Kesavan Kesavan*, 6 T. L. R. 138.
(*e*) S. A. 59 and 176 of 1073 and S. A. 119 of 1074 (unreported).

They have been held to be identical in their nature and to be synonymous terms (*a*). But see Introduction, paras 38 to 40. This fee the Jenmi is entitled to claim from his tenants at each renewal (*b*). The fact that the tenants are, under recent laws, put to the additional expense of stamp and registration fees is no valid ground for refusing the Jenmi's claim for the perquisite which he is to get as a sort of compensation for deprivation by the Legistature of his right of ouster (*c*). This fee is due to the Jenmi personally and is not usually included in the receipt granted on occasions of renewal. *Olappanam* is appropriated by the head of the *Illom* or *Matom* unlike the *Adukkuvathoo* fees, which are usually considered to fall into the family purse (*d*).

Opputhoosi is current in North Travancore and is calculated at a percentage of the kanom. In South Travancore *Olappanam* takes the place of *Opputhoosi* and is calculated at so many *fanams* per document. As both these fees have been held to denote the same thing, *Opputhoosi* in addition to *Olappanam*, will not be allowed in the absence of contract or proof that these have been customarily levied as separate fees (*e*).

It has been said before that in 1060 a Commission was appointed "to investigate and record the custom of the country in regard to the rent and other dues payable to the Jenmis" (*f*). The Commissioners collected a large volume of evidence and submitted their report shewing the various rates of fees paid to the majority of the Jenmis in the several Districts of the State. For the purposes of the Report the State was divided into 13 Districts or Desoms as shewn in the table below. The various rates of renewal fees found by the Commission to be prevailing in these Districts are given below :—

(*a*) *Janardhanan Sankaran* v. *Kali Narayani*, 16 T.L.R. 93; *Kotharatharoo Numburipad* v. *Kunju Pillay*, 17 T.L.R. 150; *Sankari Pillay Thungachi* v. *Padmanabharu*, 18 T. L. R. 149; *Sankari Pillay Thungachi* v. *Pakaravoor Peria Swamiyar*, 19 T.L.R. 68 and *Kuncheria Mathan* v. *Ramakrishna Ayan Ramasubba Ayan*, 22. T. L. R. 131.

(*b*) *Chakkiyamma* v. *Thanuvan Narayanan Potti*, 1 T. L. R. 95 and (*c*).

(*c*) *Nanaka Pillay Veloo Pillay* v. *Kesavan Kesavan*, 6 T. L. R. 138.

(*d*) *Sankari Pillay Thungachi* v. *Padmanabharu*, 18 T.L.R. 149.

(*e*) *Kuncheria Mathan* v. *Ramakrishna Ayan Ramasubba Ayan*, 22 T.L.R. 131 and other cases referred to therein.

(*f*) Introduction, para 58.

No.	Name of District.	Sakshi, Avakasom Adukkuvathoo.	Opputhoosi or Olappanam.
1	Parur Desom (A) ...	20 p. c. of Kanom ...	5 p.c. of Kanom.
2	Vaikam Desom ...	do.	do.
3	Vaikam Gramom Desom (comprising the Proverthies of Vaikam and Kulasekharamangalam of Vaikam Taluq) (B).	*Adukkuvathoo*, an amount equal to the jenmi pattom; *Purachilavu*, do. *Patharam*, 10 p.c. of Kanom.	5 p.c. of Kanom; *Para*, 4 puthens per document.
4	Sherthalai Desom (comprising the taluq of Sherthalai). (C)	*Adukkuvathoo*, an amount equal to the jenmi pattom; *Purachilavu*, half of	do.
5	Minachil Desom (comprising the taluqs of Minachil and Kottayam) (D).	*Sakshi*, 10 p.c. of. Kanom; *Kalcha*, 2½ fanams per document.	5 p.c. of Kanom.
6	Ettumanur Desom (comprising all the Proverthies in Ettumanur taluq except those included in 8).	10 p.c. of Kanom.	6½ p.c. of Kanom.
7	Changanacherri Desom (comprising the Taluq of Changanacherri).	do.	5 p.c. of Kanom.
8	Aimanam Desom (comprising the Proverthies of Aimanam, Kumarakom and Kaipuzha of the Ettumanur Taluq).	On paddy lands—2½ fanams per parah. On garden lands-an amount equal to the jenmi pattom.	11 fanams per document.
9	Thiruvellah Desom (comprising the Taluq of Thiruvellah).	Attornment, 10 p.c. of Kanom. 10 p.c. of Kanom.	7½ fanams per document.
10	Chengannur Desom (comprising the Taluqs of Chengannur, Mavelikara, Karunagapalli, Karthigappally and Ambalapuzha) (E).	The rate is not uniform but various between 10, 15, and 20 p.c. of the Kanom, the majority being 15 p.c.	12½ fanams per document.
11	Kunnathur Desom (comprising Kottarakarai, Pathanapuram, Kunnathur and Quilon Taluqs).	do.	do.
12	Trivandrum Desom (comprising the present Revenue Division) (F).	15 p.c. on old advances, 20 p.c. on new advances.	14 fanams per document.
		Attornment, 20 p.c. on old and new advances.	do.
13	Padmanabhapuram Desom (being the present Revenue Division) (F).	15 p.c. on old advances. 20 p.c. on new advances.	do.

(A) The renewal fees found customary in the Devaswoms of each Desom were for the most part the same as those that have been found payable in the Brahmaswoms of the same Desom. *Adukkuvathoo* at Moovattupuzhai has been awarded at 20 p.c. (*a*).

(B) Where the amount of fees is calculated on the percentage of a quantity of grain, it is converted into money at the commutation price of one puthen per parah of paddy, except at Vaikam Thekkumcheri where, according to both Jenmis and Kudiyans, it is customary to pay the paddy percentage of *Adukkuvathoo* in kind or its market value at the time of the transaction.

The *Adukkuvathoo* and *Purachilavu* of this Desom are together equal to the *Sakshi* or *Adukkuvathoo* of other Desoms.

Para literally means a pebble or stone. In ancient days, when a document newly executed or renewed was delivered to the tenant, a pebble also used to be handed over along with it, as symbolical delivery of possession of the land covered by the document. This appears to be the origin of *Para Avakasom*. This fee is not levied in any other part of the country.

Patharam is not a fee payable on the occasion of every renewal. It is levied by the Jenmi only when the Kudiyan transfers the holding to a third party and the purchaser attorns to the Jenmi. It is understood that the attornment with the Jenmi should be soon after the purchase and, in default thereof, interest is changed on the *Patharam* amount from the date of transfer to the date of attornment. This interest is called *Patharapalisa* but this is not claimed by all the Jenmis nor is it payable in all cases where it is claimed.

Akama, Ilama and *Bhagavathy* are also, like the *patharapalisa*, minor Avakasoms claimed by some of the Jenmis of this Desom. *Akama* and *Ilama* are presents to the *Antharjenam* or Chief Lady and the next senior male member of the *Illom* respectively. *Bhagavathy* is the present to the tutelary Goddess of the Jenmi. These Avakasoms are not claimed by all the Jenmis nor are they payable in all cases where they are claimed.

(*a*) S. A. 311 of 1073 (unreported).

(C) In the place of the *Adukkuvathoo* and *Purachilavu*, the Commission found a *Sakshi* of 10 p. c. and *Opputhoosi* of 5 p. c. on the Kanom, payable in many cases.

(D) Besides the *Sakshi* and *Opputhoosi* it will be found that in this Desom there is another item of renewal fees, *viz*., *Kalcha* for which 2½ fanams per document is payable. But this fee is payable only on Brahmaswom lands and not in the case of Devaswom lands. *Sakshi* at Kottayam and Nilamperur in Changanacherry has been awarded at 10 p. c. (*a*). This *Kalcha* is the *Thirumulkalcha* referred to in the section.

(E) It will be noticed that in these and the Southern Desoms *Opputhoosi* or *Olappanam* is not calculated at a percentage of the Kanom as is usual in the Desoms of the Kottayam Division but is a fixed sum per document. *Adukkuvathoo* at Noornad in Mavelikara Taluq was allowed at 10 p. c. and Olappanam, 17½ fanams (*b*).

(F) It will be remembered that in these Divisions the amount advanced by the Kudiyans as Kanom on one parah of land or garden is larger than the corresponding amounts in North Travancore (*c*). The fees found prevailing in both these Desoms are the same with but one exception. The attornment fee payable in Trivandrum Desom is not found ordinarily to be so payable in Padmanabhapuram Desom. The Commission also found that in Padmanabhapuram Desom the *Adukkuvathoo* was not in several places calculated on the percentage of the Kanom, but that it was customarily 2 fanams per *Achu* of the Kanom. An *Achu* is equal to 18 fanams and 2 fanams per *Achu* will, therefore, be 11¹/9 p. c. of the Kanom. The rate varied for old and new advances, but, following the custom of the other Desoms a fee of 15 to 20 p. c. of the Kanom is now being levied.

(G) Adukkuvathu at Thiruvella has been allowed at 15 p. c. (*d*).

(*a*) S. A. 302 of 1078 followed in *Ouseph Chacko* v. *Jeyanthan Jeyantharu*, I.U.T.D. Vol. I, p. 77.

(*b*) A. S. 60 and 83 of 1073 (unreported).

(*c*) *See* Introduction, para 28.

(*d*) S. A. 206 of 1073 (unreported).

(iii). Thirunalkalcha in this section as printed in the Unrepealed Regulations of Travancore (1910 Edition), Vol. II is clearly a misprint for *Thirumulkalcha.*

"Customary dues."

(12) "Customary dues" means the cesses or contributions such as Onakalcha, Allakkada, Thirunal-chumadu, Purannal-chumadu, Vara-koppu, Oolsava-koppu and the like which are payable to the Jenmi by the Kudiyan on account of his holding according to contract or custom.

Notes. The list of customary dues given in this clause is not exhaustive, *e.g.*, a most important one, the *Arukalcha* or *Aradiyanthram* fees, is omitted. It is impossible to give an exhaustive list of the various customary dues levied by the Jenmis in different parts of the country and, therefore, this Regulation provides that only such of them as the Kudiyan has contracted to pay or which may be proved to have been customarily paid by him will be recognised as the "customary dues" of a Jenmi. In the absence of a contract, the burden of proving that the fee was customarily levied is on the Jenmi. The special summary suit for recovery of Michavarom, &c., prescribed by Part C, Chapter III of this Regulation cannot be utilized to recover customary dues not specified in the *Kanapattom* deed, (Sec. 16). An ordinary summary suit or original suit is the only remedy in such cases.

The Kudiyan is bound to pay his Jenmi all dues mentioned in the Kanapattom deed or considered customary. The fact that the Kudiyan is himself a Jenmi or Brahmin will not exempt him from paying the Jenmi any fee customarily levied by that Jenmi (*a*).

The definition of "customary dues" will include *Paduthalapalisa* or *Thiruppuvaram* payable to a Jenmi by the Kudiyan on account of his holding according to contract or custom (*b*).

(*a*) *Parameswaran Nilakandar* v. *Vengu Ayan Subbayyavu Iyen*, 10 T.L.R. 91.

(*b*) *Ouseph Chacko* v. *Jeyanthan Jeyantharu* I.U.T.D. Vol. I, p. 77, following S.A. 302 of 1078 (unreported).

The customary dues mentioned in this clause do not require long explanations. *Alakkada* is a small fee paid as wages to the measurer of the paddy. It is to be paid on the *michavarom* actually due. The rate varies in different localities. The rate in the Alleppey District is 10 p. c. of the michavarom (*a*). *Alamkaram* fees include *Alakkada* also (*b*).

Vachukalcha was formerly the present or Nuzzur or *Adiyara* that the Kudiyan was required to place before or present to the Jenmi when going to see him as an acknowledgment of the superior position of the latter (*c*).

Aravakasom. This is also known as *Arukalcha* or *Aradiyam thram* fees. The Brahmin Jenmi is, by law and custom, entitled to these fees (*d*). These are presents payable by the Kudiyan on occasions of the the six important ceremonies occurring in a Malayali Brahmin Jenmi's family, *viz.*, *Annaprasanom*, *Upanayanom*, *Samavarthanom*, *Veli* or marriage of the eldest son, *Pindom* and *Masom* of the eldest male member. The *Pindom* and *Masom* of the mother of the eldest male member have also been selected at Parur as ceremonies towards the performance of which contributions are to be made by the tenants (*e*). The fees are payable if and when the ceremonies take place. In some places, the amount of this fee is calculated on the jenmi pattom of the lands demised and in others, on the *michavarom* payable to the Jenmi. It is also in a few cases calculated on the sowing capacity of the paddy lands. The rate of these fees is not uniform and depends upon various conditions, such as the nature of the property, the profit left to the tenant, &c. Two chuckrams per parah of land is reasonable (*f*). The rate at Parur is 20 p. c. of the pattom amount (*g*). These fees are not generally paid on Devaswom

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(*a*) A. S. 62 of 1076 (unreported).

(*b*) A. S. 15 and 57 of 1076 (unreported).

(*c*) *Parameswaran Nilakandar* v. *Vengu Ayan Subbayyavu Iyen*, 10 T. L. R. 91 followed in (*b*).

(*d*) *Ouseph Chacko* v. *Jeyanthan Jeyantharu*, I.U.T.D. Vol. I, page 77 following S. A. 302 of 1078 (unreported).

(*e*) A.S. 72 of 1073 (unreported.)

(*f*) A.S. 260 of 1073 (unreported).

(*g*) A.S. 239 of 1073 (unreported).

lands but only on Brahmaswom lands(*a*). Sudra Jenmis have no right, in the absence of express contract, to these fees (*b*).

Kalasavari is a fee paid by the Kudiyans of Devaswoms for the purificatory ceremony. This ceremony occurs only at long intervals. This fee corresponds to the *Aradiyamthram* fees in the case of Brahmaswom lands.

Mahanavami cess is one usually paid to Devaswoms in lieu of *Onakalcha* payable to Brahmin Jenmis (*c*).

The annual payment of a certain number of cadjans, cocoanuts, arecanuts, jack-fruits, &c., are customary dues coming under the head of *Pancha Bhogam* (*d*).

Onakalcha. A Jenmi is entitled to a small present from the kudiyan on a day which is of such importance in Malabar (*e*).

Attavisesham. (Lit.—a principal event which occurs once every year as distinguished from *masavisesham* or an event which occurs once every month). The kudiyans of Devaswoms also contribute towards the expenses of the important annual festivals in the temple. The most important of these festivals is usually the birth day of the Diety to which the temple is dedicated. It is about this time that the *Ulsavam* is generally celebrated and hence the contributions paid by the kudiyans for the important annual festival are also known as *Ulsavakoppu*.

The principal of the customary dues found by the Jenmi and Tenant Commission to be prevailing in the 13 Districts mentioned at page 17 are given below in a tabular form :—

(*a*) A.S. 181 of 1076 (unreported).
(*b*) A.S. 219 of 1073 (unreported).
(*c*) S.A. 12 of 1076 (unreported).
(*d*) S. A. 365 of 1077 (unreported).
(*e*) *Ouseph-Chacko* v. *Jeyanthan Jeyantharau*, I.U.T.D. Vol. I, page 77.

No.	Name of district.	Arukalcha or Aradiyamthram.	Onakalcha.	Attavisesham or Ulsavakoppu.	Ashtabandha Kalasam or Kalasavari.
1	Parur	One-tenth of the Jenmi pattom.	One bunch of bananas or one fourth of a rupee per tenant.	One-fourth of a rupee per tenant.	One-third of the Jenmi pattom.
2	Vaikam ...	One-tenth of the Jenmi pattom of paddy lands. Two-tenths of Jenmi pattom of gardens.	Do.	Do.	Two tenths of Jenmi pattom.
3	Vaikam Gramom ...	20 p. c. of the Jenmi pattom.	Do.	......	20 p.c. of Jenmi pattom.
4	Sherthalai ...	Do.	Do.	One-fourth of a rupee per tenant.	One-third of Jenmi pattom.
5	Minachil ...	One-fifth of Jenmi pattom of paddy lands. One-fourth of Jenmi pattom of gardens.	Do.	Do.	Do.
6	Eettumanur ...	20 p.c. of pattom of paddy lands. 25 p.c. of pattom of gardens.	Do.	Do.	One fanam per para of paddy land. One-third of the pattom of gardens.
7	Changanackeri ...	Do.	Do.	Do.	Do.
8	Aimanam ...	Do.	Do.	Do.	Do.

No.	Name of district.	Arukalcha or Aradiyamthram.	Onakalcha.	Attavisesham or Ulsavakoppu.	Ashtabandha Kalasam or Kalasavari.
9	Thiruvellah ...	2 chs. per parah of paddy land. An amount equal to the Jenmi pattom of gardens.	1 fanam per tenant.	1 fanam per tenant.	One-third of the Jenmi pattom.
10	Chengannur (D) ...	One Edangali of rice (2 chs.) per parah of paddy land. An amount equal (to the michavarom on gardens.	Do.	Do.	An amount equal to the michavarom.
11	Kunnathur (D) ...	One chukram per parah of paddy land. One-half of the michavarom on gardens.	Do.	Do.	Do,
12	Trivandrum (E) ...	......	......	......	......
13	Padmanapuram ...	......	......	......	......

(A). The pattom assessment in Parur, the Commissioners say, does not leave the same margin of profit to the tenant as the assessment in *Vaikam* and hence the *Arukalcha* is lower in Parur.

(B) As stated before, when the percentage of pattom happens to be in kind the paddy is commuted into money at the rate of one puthen for one parah of paddy (*a*).

Besides the *Arukalcha* and *Onakalcha*, the Jenmis of this Desom claim *Kudithengoo Avakasom*, *Thiruvathirapalam*, *Kombuchakka*, *Kulayadakka* and *Kulavazhakka*. The last three are included in *Punchabhogam*. These and *Thiruvathirapalam*, are found payable only in particular instances.

The *Kudithengoo Avakasom* is admitted by most of the tenants. In assessing the pattom on gardens, it is the custom in these parts to exclude from assessment and set apart for the Jenmi one for every 33 trees in a garden. The tree so set apart is called *Kudithengoo* or *Kettuthengoo*. On each of such trees, one-fourth of a *Chodana* of cocoanut-oil and one bundle of 12 cadjans called *kettola* are made payable to the Jenmi annually. If the number of trees in a garden be less than 33 or even 30, one-half or one-fourth of the aforesaid amounts is paid to the Jenmi for *Kudithengoo Avakasom*. The number of trees set apart and the charges thereon are expressly mentioned in the documents.

No fee for *Attavisesham* was found by the Commission to be ordinarily leviable in this Desom.

(C) The *Arukalcha* fee in this Desom is higher than in Parur and Vaikam Desoms, but it will be remembered that the renewal fees in this Desom are lower than those in Parur and Vaikam (*b*).

(D). In these Desoms *Arukalcha* is ordinarily calculated on the extent of michavarom of the lands and not on the Jenmi pattom thereon as in the Northern Desoms.

(E) The *Arukalcha* and *Onakalcha* found payable in all the other Desoms were not found by the Commission to be payable in these Divisions. Many Jenmis who submitted statements of

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(*a*) see page 18.

(*b*) see page 17.

their various dues to the Commission did not include them while others who included them said that the payment of these was left to the will and pleasure of the tenants. In a few cases alone were these fees claimed of right but, in the opinion of the Commission, the claims were not established by evidence. Hence, their omission from the above tabular statement.

In most of the *Kanapattom* documents of these Desoms a *Chumadu* or load of curry stuffs or its value in money called *Chumattupanam* is made payable to the Jenmi every year. This *Chumadu* though paid regularly nowadays along with the annual michavarom, was formerly, according to the option of the Kudiyans, paid annually or left to accumulate to be paid on ceremonial occasions and, if none occurred in the interval, to be adjusted at the next renewal of the document. An annual present on the occasion of the birth day of the Jenmi or other festivity appears also to be provided for in most of the *kanapattom* documents.

The absence of large extra cesses in these Desoms is due to the fact that the majority of what are now called *kanapattoms* were originally usufructuary mortgages in which the amount of the debt alone was generally specified. The interest on the debt was almost equal to the Jenmi pattom. Hence the Jenmi should not, in justice, be allowed to levy renewal fees. But as they do so now in South Travancore and as the margin of profit left to the tenant is but small it is not surprising that the kudiyans as, a body, are extremely unwilling to pay large extra cesses like the tenants in North Travancore.

"Duly registered."

(13) "Duly registered" means registered in accordance with the law for the time being in force relating to the Registration of Assurances.

"Improvement."

(14) "Improvement" means, with reference to a holding, any work including its product which is suitable to the holding and consistent with the conditions on which it is based, by which the value of the holding has been

and continues to be increased, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it.

Explanation I.—It includes among other things—

(*a*) the construction of wells and other works for the storage or supply of water for agricultural or domestic purposes;

(*b*) the construction of works for drainage and for protection against floods;

(*c*) the planting of trees;

(*d*) the reclaiming, enclosing, levelling and terracing of land for agricultural purposes and other works of a like nature;

(*e*) the erection in Purayadoms or plantations of farm buildings and of dwelling-houses, cattle-sheds or other structures, permanent walls or strong fences which are not of a temporary nature; and

(*f*) the renewal or reconstruction of any of the foregoing works or such alterations or additions thereto as are not of the nature of mere repair and as durably increase their value.

But it does not include such clearances, embankments, levellings, enclosures, temporary wells and water channels as are made by tenants in the ordinary course of cultivation and without any special expenditure or any other benefit accruing to land from the ordinary operations of husbandry.

Explanation II.—A work executed by a Kudiyan is not an 'improvement' if it substantially diminishes the value of any other part of his Jenmi's property.

Notes. The definition of "Improvement" in this Regulation is a copy, with slight modification, of the definition given in the Punjab Tenancy Act of 1887. To be an "improvement" within the meaning of the definition the work must be (1) suitable to the holding; (2) consistent with the conditions on which it is based; (3) such as to enhance the value of the holding and continue to do so and (4) one not substantially diminishing the value of any other part of his Jenmi's property (See Exp. II). The work claimed to be an improvement need not be executed on the holding itself but need only be executed for its benefit or, after execution, made directly beneficial to it.

Explanation I (*a*).—This clause refers to any works for irrigation which the Kudiyan may construct.

(*c*) In the Bill as introduced into the Council this clause included "fruit trees and other useful trees and plants" (*a*). The Select Committee altered it into the present form, but the sense intended by the Commission has been maintained. The *planting of any kind of tree* will be an "improvement" within the meaning of this clause and the Kudiyan must be compensated therefor when evicted. The Bill as introduced into the Council also contained a clause awarding compensation to Kudiyans for trees which they did not *plant* but which *grew spontaneously* and which they had *reared* (*b*). This provision was, however, omitted by the Select Committee. During the discussion of the Bill in the Legislative Council an attempt was made to restore the clause dropped by the Select Committee. The amendment was, however, not carried. The claim of the Kudiyan for the value of trees of spontaneous growth which he did not *even rear* but *only allowed to grow* on his holding is, therefore, much weaker.

In *Raman Bhattathiripad* v. *Avira Varki* (*c*), the Court awarded the Kudiyan in a case analogous to eviction the value of pepper vines planted and reared by the Kudiyan. Again, in *Mani Ouseph* v. *Narayanan Krishnan Numbury* (*d*) which was a suit for redemption of a Kanapattom, pepper vines were valued

(*a*) *See* S. 10, cl. (*g*) of the draft Bill.
(*b*) *See* S. 10, cl. (*h*) of the draft Bill.
(*c*) 18 I.L.R. 95.
(*d*) I.U.T.D., Vol. I, page 7.

as improvements and their value awarded to the Kudiyan. It seems to have been assumed in the former case that the only obstacle to regard the rearing of vines as "improvements" was the doubt whether the rearing of them was consistent with the object of the demise. In the latter case it was observed that pepper vines had to be reared with labour and continued to yield for a great many years and that they should be valued to the tenant as improvements. Sec. 7, cl. (4) and Sec. 8 provide, however, for the payment of the value of "improvements" only and as, in defining the term, this section speaks only of "the planting of *trees*" and as it has been ruled in many cases (*a*) that pepper vines are not "trees," the rulings referred to above awarding compensation for pepper vines are doubtful law.

(*d*). If the Kudiyan has converted what was once waste into paddy land, it should be viewed as an "improvement" (*b*). But where paddy land is converted into a garden, the question whether such conversion would be an "improvement" is a difficult one. No Kudiyan is entitled to convert paddy land into garden without the consent of the Jenmi (*c*). For the first few years after the conversion the land has undoubtedly not increased in productive power owing to such conversion. There may be cases too where the conversion may result in a diminution of the profits of the land. "Locality, soil, the kind of trees planted, etc., will be factors in determining whether the conversion has been to the advantage of the landlord or not." If such conversion has increased the productive powers of the land there is no doubt that it is an "improvement" (*d*). When such conversion is deemed an "improvement," the Kudiyan's share of the cost is three-fourths and the Jenmi's one-fourth (*e*). The removal at a heavy cost of silt accumulated on a part of the demised lands in a season of exceptionally heavy floods which it was not in the power of the Kudiyan to prevent, is not one of the ordinary

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(*a*) *Kotharatharoo Numburipad* v. *Kunju Pillay*, 17 I.L.R, 150 and S. A. 260 of 73 (unreported).

(*b*) *Usenar Pillai Kutti Assen Kunju* v. *Kesavan Kesavan*, 9 T. L. R. 50.

(*c*) *Makki* v. *Verky*, 18 T. L. R. 91 and S. A. 151 of 1075 (unreported).

(*d*) S. A. 44 and 79 of 1074 (unreported).

(*e*) A. S. 225 of 1081 (unreported).

operations of husbandry which a tenant is bound to undertake at his own cost. It is a work that requires an investment of money and must be classed as an "improvement" and the Kudiyan is entitled to be reimbursed the cost of such improvement (*a*).

(*e*) To be "improvements" the buildings which the Kudiyan puts up must be "suitable to the holding and consistent with the conditions" of the lease. The Kudiyans were generally of the cultivating class and the Kanapattom was and is generally intended to be only lease for agricultural purposes. The grounds, therefore, for including "farm buildings and cattle sheds"—structures necessary for the existence of the agriculturist—within the definition of "improvement" are apparent. As the Kudiyans were given a right of permanent occupancy in their holdings and as they must have houses to live in and as it was found during the discussion which preceded the Royal Proclamation of 1042 that many Kudiyans had so built dwelling houses and have been occupying them for generations, the Legislature thought it fit to include "dwelling houses" too within the meaning of the term "improvement." But this was a departure from the customary law in force before this Regulation. In *Parameswaran Nilakandar* v. *Vengu Ayan Subbayyavu Iyen* (*b*) a Full Bench of the High Court laid down that "buildings though improvements on the property * * * are not such as the tenant is bound to surrender to the Jenmi or the Jenmi is entitled to claim to recover with the property at the time of redemption or ejectment. * * * The buildings on Kanom lands held under the Proclamation are not improvements in the sense in which clearing, levelling, sinking wells, planting, etc., are. These latter go with the land and cannot at the tenant's will be altered. The Jenmi has a right to recover them with the land and any attempt on the part of the tenant to interfere with them after once effecting them would he considered an act of waste." Again, during the discussion in the Legislative Council on this clause Mr. K. Krishnaswamy Rao, then the Chief Justice, said "under the law as it stands, buildings are treated differently from plantations and purely agricultural improvements. In the case of the latter the

(*a*) *Vishnu Easwaran* v. *Narayanan Thrivikramaru*, 14 T. L. R. 23.
(*b*) 10 T.L.R. 91.

Jenmi is bound to pay the value and take the improvements, but in the case of buildings the tenant has the option of removing them." A departure from the customary law of "buildings considered as improvements" is necessary in other cases also.

But all buildings put up by a Kudiyan on his holding will not be deemed to be "improvements." The term "other structures" in this clause will not include any factories, shops, etc., which the Kudiyan may put up. Before the date of this Regulation, a Jenmi had the right to prohibit the construction of a building on the land by the Kudiyan other than a dwelling house suitable to the Kudiyan's position, if such construction was likely to interfere with the productive capacity or improvement of the land (*a*). But this right of the Jenmi was taken away by sections 5, 7 and 21 of this Regulation. The Kudiyan can now build factories or shops, but in doing so he must not commit waste by cutting down fruit-bearing trees. If by putting up buildings not falling under the class of "improvements" he enhances the annual rental value of the holding, the Jenmi is entitled to share in such enhanced rental (*b*). But these buildings not being "improvements," the Kudiyan cannot compel the Jenmi to compensate him therefor when evicted. The Kudiyan is at liberty to pull down such buildings at any time he chooses and remove the materials without hindrance from the Jenmi (*b*).

(*f*) See under clause (*d*), 14 T.L.R. 23.

Explanation II.—There are strong reasons for the omission of this Explanation from the definition of "Improvement." "If an improvement substantially diminishes the value of any other part of the landlord's property, whether within or outside the tenant's holding, the landlord has his remedy by way of Civil suit brought within the period allowed by the law of limitation. In a vast number of cases the improvements were effected, without objection by the landlord, one or more generations ago, and it would * * * be inexpedient to permit the plea that such improvements to a holding were injurious to other portions of the landlord's property" (*c*). "Suppose for instance that a tenant who

(*a*) *Parameswaram Nilakandar* v. *Vengu Aiyen Subbayyavu Iyer*, 10 T. L. R. 91.

(*b*) See Section 21.

(*c*) Report of the Select Committee on Madras Act I, of 1900.

squatted half a century ago in the forest at the foot of the Western ghats has diverted a jungle stream belonging to his landlord, and thus supplied with irrigation some paddy lands which the tenant has formed by reclaiming the jungle. If and when the landlord proceeds to evict him * * * We cannot allow the landlord to plead, in abatement of the compensation which he ought to pay, that the tenant felled a number of valuable trees 50 years ago which would now be worth over so much per cubic foot, and that the diversion of the stream has deprived other lands of the possibility of irrigation, and that, therefore, the tenant's work has substantially diminished the value of the landlord's property" (*a*). It may be expected that these reasons would receive due weight when the Regulation is sought to be amended.

CHAPTER II.

OF THE RIGHTS AND LIABILITIES OF JENMIS AND KUDIYANS.

Tax on Jenmom lands transferred by sale, etc., to be borne by transferee.

4. When a Jenmi transfers by sale, gift or otherwise, the Jenmom right in the whole or any part of his Jenmom lands and the Sircar imposes or enhances the tax on the Jenmom lands transferred, such tax shall be borne by the transferee.

Notes. (1) *Object.* The popular notion was that the Malayalee Brahmins alone could hold the Jenmom right, because the land was given to them alone by the Sage Parasurama. This notion which acted as a check upon the free transfer of land derived some support from the action of the Sirkar which claimed to impose or enhance the tax on the land and also to subject the transaction to the process of *Ottivilakkam*, *i.e.*, the Government claimed to treat the purchaser of the Jenmom right as a mortgagee of the land for the amount of the price and not as the full

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(*a*) Speech of the Hon'ble Mr. H. M. (afterwards Sir Henry) Winterbotham in the Madras Legislative Council, dated 14th November, 1899.

owner of the land. Instances in which this right was exercised by Government are, however, rare. It may probably be due to the transfers of Jenmom lands having been made secretly or under false names. Hence, the Jenmi was not getting an adequate price for his property. The first part of this section affirms that all transfers of Jenmom land are valid. The second part serves a second purpose. It lays down that when the Sirkar imposes or enhances the tax, the transferee shall pay the same. This is to protect the Kudiyans who had been holding the lands in the belief that the tax they have to pay to Government will not be enhanced. If on account of a transfer of the Jenmom right, the Sirkar enhances the tax, the transferee must pay such enhanced tax, for such enhancement was not due to a revision of the Government demand throughout the country but was due to a special Revenue law or practice applicable to the transfer of Jenmom rights.

(2) *Effect of transfer of Jenmom right on previously created tenancies.* A sale of the Jenmi's rights does not extinguish the tenancy over the lands created under the Royal Proclamation or this Regulation, even though the purchaser is one who is not entitled to be called a "Jenmi" under the Royal Proclamation of 1042 (*a*).

(3) The purchase at a Court sale of a Jenmi's right over property outstanding on *Kanapattom* tenure, *i.e.*, a purchase of "Jenmom lands" transfers the Jenmi's title to the purchaser without actual delivery of possession (*a*).

Right of Kudiyan to permanent occupancy.

5. Subject to the provisions of this Regulation, every Kudiyan shall have a right of permanent occupancy in his holding and shall be exempt from liability to eviction save as laid down in section 7.

In the absence of an express contract, nothing in this section shall be taken to confer the right of permanent occupancy on the Kudiyan of a non-

(*a*) *Kottayil Varki* v. *Elayathu Sankaran Krishnan*, 8 T.L.R. 6; *Nethran Pappi Antherjenom* v. *Krishnan Narayanan*, 12 T.L.R. 101 and A.S. 313 of 1081 (unreported).

Malayalee-Brahmin Jenmi, unless he or his predecessors in interest or both have uninterruptedly held the holding for a period of not less than twenty-five years.

The provisions of para 2 do not apply to assignees of Malayalee-Brahmin Jenmis.

Notes. (1). *Object.* This section is intended to confer upon *every kudiyan* a right of occupancy in his holding.

(2) *Antecedent law.* The customary law was the tenant or Kudiyan was not evicted so long as he paid his dues punctually. The fixity of tenure depended upon the kudiyan's punctuality in the payment of rent and other customary dues (*a*). The Royal Proclamation of 25th Karkadagom 1042 gave statutory recognition to this custom. But by a narrow interpretation of the term Jenmi, the benefit of the Proclamation was limited to the Kudiyans of Malayali Brahmins and Devaswoms (*b*). The Kudiyans of non-Brahmin Jenmis obtained no right of permanent occupancy (*b*).

(3) *Scope of the section.* The provisions of this section apply to all persons holding lands on *kanapattom* tenure. But in the case of non-Malayali Brahmin Jenmis the Kudiyan is, in the absence of express contract, given the right of permanent occupancy only if he or his predecessors in interest or both have uninterruptedly held the holding for a period of not less than 25 years. It is only every *kudiyan* that is given a right of permanent occupancy. *Mere long possession under a subordinate or derivative tenure* is not sufficient to give the tenant a right of permanent occupancy (*c*)

(4) This section should be read along with sections 42 and 44, para 2. This Regulation does not affect any right declared established or already acquired by Jenmis or Kudiyans on the date it came into force and it does not apply also to Kanapattoms executed since the 25th day of Karkadagom 1042 which expressly provide for redemption.

(*a*) The Jenmi and Tenant Commission's Report, para 31.

(*b*) See Introduction, para 60.

(*c*) *Guptan Nilakandan Numbury* v. *Vasudevan Vasudevan Numbury*, 12 T.L.R. 33 followed in *Raman Krishnan* v. *Pooruruttathi Thirunal Valia Potti Amma Rajavoo*, 2 T.L.J. 43 (**F.B.**).

(5) *Kanapattoms executed before the Royal Proclamation of* 1042. Cl. (1) of the Royal Proclamation laid down that " while tenants hold lands of Jenmis for consideration under such tenures as *Kanapattom, Otti, Marayapattom, Oolavupattom, Kotalikani*, &c., and so long as, they pay the stipulated rent and other customary dues " they shall not be evicted by the Jenmis. Thus, all *kanapattoms* executed before the date of the Proclamation (*i.e.*, 25th Karkadagom 1042) became irredeemable, even though the deed provided that the tenant will be paid the mortgage amount and value of improvements on the date of redemption. A Full Bench of the High Court held that even if the above expression import an express or implied contract on the part of the Kudiyan to surrender the lands (the learned Judges held that the expression did not amount to a contract to surrender) it did not give the Jenmi a right to eject the tenants otherwise than as provided by the Proclamation (*a*). Besides the various tenures mentioned in clause (1) of the Proclamation, the Courts included other similar tenures also among the number, *e.g.*, *Nadappupanayam* which the Courts held is what is technically known as *otti* and included within cl. (1) of the Proclamation (*b*).

(6) *Kanapattoms executed after the 25th Karkadogam 1042 but before the date of this Regulation* were also made irredeemable but they may be redeemed if the Jenmi took care to conform to the provisions of cl. (8) of the Proclamation. Such deeds are not affected by anything contained in this Regulation (*c*). All Kanapattoms executed after the date of the Proclamation but which did not expressly provide for redemption as laid down in cl. (8) of the Proclamation were irredeemable and continue to be so under this Regulation. A mortgage deed was executed by a Proclamation Jenmi. It did not contain a provision entitling the Jenmi to redeem the land on the expiry of the term fixed. On the other hand, the deed expressly stated that on the expiry of the term a renewal will be granted. The High Court ruled that in the light of the Proclamation this deed created what was com-

(*a*) *Kanakku Sivathanuvan*] *Ammanathan* v. *Krishnan Padmanabhan*, 2 T.L.R. 58 F.B.

(*b*) A. S. 297 of 1074 (unreported).

(*c*) Section 42.

monly known as a Kanapattom tenure (*a*). But a mortgage-deed executed by a Malayali Brahmin Jenmi in 57 reserving an annual *michavarom* but under which no renewal fees or customary dues were paid is not a Kanapattom (*b*).

(7) In the case of *documents executed by Jenmis after this Regulation* came into force the document, if it be a Kanapattom, must satisfy the provisions of section 3, clauses (1) and (2) and section 15.

In the case of contracts relating to Jenmom lands entered into after the date of this Regulation, the question whether the tenancy is terminable or otherwise will be determined according to the intention of the parties as gathered from the terms of the contract (*c*).

(8) *Non-Brahmin Jenmis.* It will be remembered that the Proclamation of 1042 did not affect the non-Brahmin Jenmis and, therefore, the lands of such Jenmis in the possession of Kanapattom tenants were redeemable (*d*). But the intention of the Legislature having been to include the non-Brahmin Jenmis too within the Proclamation and that intention having failed to be given effect to the present Regulation was expressly made clear on the point so as to apply to *all* Jenmis. The non-Brahmin Jenmis were thus deprived of the right of ouster which they had enjoyed but to prevent any hardship that may arise on account of a sudden change in the law it was provided, (i) that para 2 of this section should come into force only on 1st Chingom 1074, though the other provisions of the Regulation came into force on 1st Makaram 1072; and (ii) that the tenant of the non-Brahmin Jenmi or his predecessors in interest or both must have been in uninterrupted possession of the holding for more than 25 years *before suit if the suit be brought after 1st Chingom 1074.* The period of grace allowed by (i) was to enable the non-Brahmin Jenmis to sue for redemption of Kanapattoms and such redemption was decreed even though the Kudiyan was in possession for more than 25 years.

(*a*) *Narayanan Chennan Numbury* v. *Krishnan Narayanan*, 11 T.L.R. 1.

(*b*) *Sivakami Lakshmi Ammal* v. *Narayana Iyen Janardana Iyen*, I. U.T.D., Vol. I, page 73.

(*c*) Section 43.

(*d*) *See* para 60 of the Introduction.

Many non-Brahmin Jenmis took advantage of this short time given them to sue for redemption. The right conferred by para 2 of this section on the Kudiyans of non-Brahmin Jenmis became absolute on 1st Chingom 1074. The suit must have been instituted before that date and any suit instituted on the 2nd Chingom 1074—the last day of the year 1073 and the first day of the year 1074 being holidays on which the Courts were not open for the reception of plaints and other papers—cannot take away the right thus acquired by the Kudiyan (*a*). A renewal of a Kanapattom is only a continuance of the old contract and is not an interruption in enjoyment (*b*). A renewal will not deprive the Kudiyan of a non-Brahmin Jenmi of the benefit of this section if he has been in possession on the whole for 25 years, though from the date of the renewal to the date of suit 25 years have not elapsed (*c*). The tenant of the non-Brahmin Jenmi who was to obtain the benefit of this section must be one who was enjoying the lands on *Kanapattom* tenure, *i. e.*, a Kudiyan within the meaning of this Regulation. The presumption that old *otti* deeds executed by Proclamation Jenmis are irredeemable will not be extended to an *otti* by a non-Brahmin Jenmi (*d*). If the document under which the tenant was enjoying the lands did not contain any provision for renewal or payment of renewal fees or any expression or stipulation which gives it the usual characteristics of a Kanapattom document, the deed is a redeemable mortgage and not an irredeemable Kanapattom (*e*).

Nerpathy Ola is the usual expression by which Kanom demises of non-Brahmin Jenmis were known in olden days (*f*).

(9) *Kudiyan how evicted.* A tenant who has acquired a right of permanent occupancy under paras 1 and 2 of this section

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(*a*) *Sankaran Kochoonni* v. *Ouseph Devasya*, 16 T. L. R. 163 (F. B.).

(*b*) *Narayani Pappi* v. *Krishnan Karthavu*, 23 T. L. R. 162 and A. S. 141 of 1076 (unreported).

(*c*) A. S. 327 of 1082 and A. S. 110 of 1083 (unreported); *Kunju Pariethu* v. *Rama Panikar*, T. L. J. Vol. I, page 147 and *Narayani Pappi* v. *Krishnan Karthavu*, 23 T. L. R. 162.

(*d*) S. A. 80 and 101 of 1083 (unreported).

(*e*) S. A. 298 of 1079. *See* also (*d*).

(*f*) S. A. 208 of 1078 (unreported).

can be evicted only on any of the grounds mentioned in Section 7 (*a*).

(10) *Effect of grant of occupancy right.* The grant of occupancy right to the Kudiyan has created divided ownership in the soil. But the interests of the Jenmi and the Kudiyan cannot be said to be equal. The Jenmi is the proprietor of the land (*b*) while the Kudiyan's right is only to enjoy it for ever subject to certain conditions (*c*). Any increase in the produce of the land, whether brought about by the labour of the Kudiyan or not, he is bound to share with the Jenmi (*d*). The Kudiyan's interest is "centred in the usufruct." If he incurs forfeiture or surrenders the land the Jenmi becomes entitled to both the land and the usufruct (*e*). The Jenmi is the owner of wild trees of spontaneous growth (*f*), and even in the case of timber trees reared or planted by the tenant the Jenmi may cut them after notice to the Kudiyan and offering him fair compensation (*g*). Of course, the chances of the tenure coming to an end are very remote. A valuation of the respective interests of the Jenmi and the Kudiyan becomes necessary when a holding is acquired by Government for public purposes. In such cases, the compensation paid by the Sirkar represents the holding and has to be divided between the parties according to their respective interests. In the case of a garden the Court awarded one-fourth of the value of the ground and three-fourth of the value of the trees to the Kudiyan and the balance to the Jenmi (*h*).

Right of Kudiyan heritable and transferable.

6. The right of a Kudiyan in his holding shall be heritable and transferable; but every transfer shall be in writing and no transfer of a portion of the holding

(*a*) A. S. 63 of 1076 (unreported).

(*b*) Sec. 3, cl. (1).

(*c*) Secs. 5, 8, 11 and 17.

(*d*) Sec. 21, cls. (*a*) (3) and (*b*) (4).

(*e*) Secs. 7 and 12.

(*f*) Sec. 8.

(*g*) *Raman Bhattathiripad* v. *Avira Vavki*, 18 T.L.R. 95.

(*h*) *Padmanabhan Krishnaru* v. *Velappavoo Panditharu*, 18 T. L. R. 43, followed in *Cochu Ouseph* v. *Dewan of Travancore*, I. U. T. D. Vol. I, page 110.

without the consent, in writing, of the Jenmi, shall affect the liability of the entire holding for Michavarom and other dues leviable by the Jenmi.

Notes. (1) *Scope of the section.* The right of permanent occupancy conferred by section 5 is made by this section heritable and transferable. The Kudiyans enjoyed the same rights under the Proclamation of 1042 and it has been found to have been exercised by them even before that date.

(2) *Transfer of entire holding.* The Bill as drafted by the Commission and introduced into the Council contained a clause (*a*) making it obligatory on the purchaser or donee of the Kudiyan's rights to report the transaction to the Jenmi who, however, had no option to refuse to recognise such purchaser or donee as the new Kudiyan. This clause survived the Select Committee stage of the Bill (*b*) but during its discussion in Council it was thought unnecessary and was, therefore, omitted. The speech of the gentleman who moved the omission of the clause shews that it was thought that the clause was intended to confer on the Kudiyan a right to compel the Jenmi by suit to recognise the transfer. The Kudiyan's right being declared to be transferable by this section there was no need to confer on the Kudiyan a right to compel the Jenmi by suit to recognise the transfer as there could be "no right without a remedy" (*c*). But the clause was really intended to serve another purpose. The practice was that when the Kudiyan transferred his holding he acquainted the Jenmi forthwith of the fact of such transfer, the customary law making it obligatory on him to do so (*d*). The origin of this practice probably was the right of the Jenmi to veto any transfer by the Kudiyan of his rights with the intention of defrauding the Jenmi. But with the change in the times and the expectation of fixity of tenure engendered by the conduct of the parties the right of veto claimed by the Jenmi came to be seldom or never exercised. The right was thus reduced to one of being entitled

(*a*) *See* Section 8, cl. (2) of the Draft bill.

(*b*) *See* Section 6, cl. (2) of the bill as amended by the Select Committee.

(*c*) *See* the Proceedings of the Legislative Council dated 14th December, 1894.

(*d*) Mr. Kunhiraman Nair's Memo on Land Tenures, Part II, para 39.

to be informed of the transfer. This notice was necessary in the interests of both Jenmis and the purchaser of the Kudiyan's rights. It is customary with some Jenmis (*e.g.*, the Jenmis of Vaikam Gramom), to levy a fine on the occasion of every transfer of the holding. Interest on this fine was claimed by the Jenmi if the Kudiyan neglected to attorn in time. When an alienation of the Kudiyans' rights takes place behind the back of the Jenmi the latter may reasonably claim information as to the person from whom he is to demand rent. It cannot be that the registration of the deed of transfer is sufficient notice to the Jenmi of that fact, for, registration is no notice except to those who may have occasion to make a search in the Registry office (*a*). A Jenmi is not a person so bound to ascertain from the Registry office whether the Kudiyan has alienated his holding (*b*). The absence of a provision making it obligatory on the Kudiyan to report the transfer of his rights has caused great inconvenience and loss to the Jenmi. A very hard case was the following. A Jenmi sued and obtained a decree against a Kudiyan for arrears of *michavarom*. The assignee of the Kudiyan was not made a party to the suit. When the Kanom right of the Kudiyan was attached in execution of the decree the assignee objected to the attachment and the objection was allowed. The Jenmi filed a fresh suit for a declaration of his rights to attach and sell the holding. The Court held that the second suit was barred by *res judicata* (*c*). If this decision is correct, the necessity of recognising the ancient practice has become very urgent.

When a Kudiyan transfers the entire holding to another there is " privity of estate " between the Jenmi and the transferee who becomes liable for the rent and the other covenants in the lease (*d*).

(3) *Transfer of a portion of the holding.* The occupancy right conferred by section 5 being subject to or charged with the liability to pay *michavarom* &c., to the Jenmi (section 13)

(*a*) *Kunjan* v. *Ulahannan Ouseph*, 17 T.L.R. 117.

(*b*) *Nilakantan Nilakantan Numburipad* v. *Ayappan Parameswaran*, 17 T.L.R. 58.

(*c*) S.A. 291 of 1073 (unreported).

(*d*) *Parameswaran Nilakantan* v. *Kuthiraru Subramaniaru Numburipad*, I.U.T.D. Vol. II, page 538.

the Kudiyan should not be permitted, without the consent of the Jenmi, to transfer a portion of his holding and therewith a portion of his liability too. The Jenmi's assent should be in writing. Under this section the entire holding will, even after partition among the tenants, continue to be liable for the whole rent in the absence of Jenmi's consent in writing to the partition. A Jenmi's admission of partition among tenants does not amount to a waiver of his right under this section; nor does a settlement of accounts imply the Jenmi's consent to the division (*a*). It has been held that a Jenmi is not entitled to arbitrarily refuse his sanction to the transfer of a portion of the holding when the Kanom and Michavarom are duly apportioned and the terms of the transfer are otherwise fair and equitable and do not injuriously affect the Jenmi (*b*). This ruling follows the spirit of a provision in the draft Bill making it obligatory on the Jenmi to accord permission to the splitting up of the holding (i) if the market value of the holding transferred bears the same proportion to the amount of Kanom and Michavarom reserved thereon as the market value of the entire holding bears to the entire Kanom and Michavarom reserved in the lease, and (ii) if the terms of the transfer seem otherwise fair and equitable (*c*). The Select Committee approved of this clause and retained it in the Bill. When the Bill was discussed in Council this provision was, however, dropped. The decision referred to above (*b*) is not supported by anything contained in this Regulation. Its correctness has been doubted by the High Court in a subsequent case (*d*). The point, when it arises again will, therefore, have to be referred to a Full Bench.

Just as the Kudiyan cannot split up his holding without the consent of the Jenmi, the Jenmi too, cannot, without the consent of the Kudiyan, apportion the *Michavarom* on each of several plots included in one holding. Where a number of plots of paddy land are held by a Kudiyan under one demise for an aggregate undivided rent, the Jenmi cannot, of his own motion,

(*a*) A. S. 289 of 1081 (unreported).

(*b*) A. S. 203 of 1077 (unreported).

(c) *See* Section 8, cl. (3) of the draft bill.

(*d*) *Parameswaran Nilakantan* v. *Kuthiraru Subramaniaru Numburipad*, I. U. T. D. Vol. II, page 538.

take away part of the land and claim for the remainder a portion of the rent fixed by himself (*a*).

4. *Effect of partition of holding.* Where a partition of the Kanom property takes place, renewals must be taken from the Jenmi on payment of the regular Ávakasoms (*a*).

Eviction of Kudiyan.

7. (1) No Kudiyan shall be evicted from his holding or any portion of his holding except in execution of a decree of Court and no Court shall make a decree for such eviction except for—

(*a*) non-payment of Michavarom for 12 years consecutively, notwithstanding an express demand in writing made at any time after the first year's arrears shall have accrued.

(*b*) neglect or refusal to pay renewal fees and take a renewal within one year from the date on which such fees fall due and six months after the service upon him of a notice of demand in writing.

Provided that, when such neglect or refusal has taken place before this Regulation comes into force, it shall not confer on the Jenmi the right of eviction unless he proves that such neglect or refusal has been continued for a period of one year after this Regulation comes into force and six months after the service upon him of a notice of demand in writing under this Regulation.

Explanation.—Failure to pay renewal fees or take a renewal, due to *bona fide* differences between the Jenmi and the Kudiyan as to the amount of the renewal fees or as to the terms of the renewal, shall not be deemed to be neglect or refusal within the meaning of clause (*b*).

(*a*) A. S. 295 of 1074 (unreported).

(*c*) wilful denial of Jenmi's title and persistence in such denial even at the time of the first hearing of a suit for eviction:

Explanation.—A denial of the Jenmi's title under a mistake of fact or of law is not wilful within the meaning of clause (*c*).

(*d*) intentional and wilful commission of such acts of waste as are calculated to materially and permanently impair the value and utility of the holding so as to injure the interests of the Jenmi.

(2) The written demand or notice mentioned in this section shall be presented to the Court of the District Munsiff in whose local jurisdiction the holding is situated and it shall be served by such Court on payment by the Jenmi of the prescribed process fees in the manner provided for the service of summons in the Code of Civil Procedure. But no Court fees shall be levied on the application presented to the Court by the Jenmi requesting the service of such demand or notice.

(3) A suit for ejectment on the ground stated in clause (*d*) shall not be entertained unless the Jenmi has served a notice on the Kudiyan specifying the particular act of waste complained of, and, when the waste is capable of remedy, requiring the Kudiyan to remedy the same and in any case to pay reasonable compensation for the waste, and the Tenant has failed to comply within a reasonable time with that request.

(4) In case of eviction the Kudiyan shall, in addition to a refund of the Kanom money, be entitled to be compensated for improvements made by him

or by his predecessors in interest for which compensation has not already been paid; and his sub-tenants, if any, shall also be entitled to such compensation in respect of improvements made by them.

Explanation.—Nothing in this section shall be construed to bar the right of the Jenmi to recover the arrears of Michavarom and customary dues due at the date of eviction.

Notes. (1) The permanent occupancy right conferred by section 5 may be forfeited on any one of the four grounds mentioned in this section. These grounds are all "breaches of the fundamental conditions of the holding" and are enough to work a forfeiture of the tenancy under any civilized system of law. And when a Kudiyan incurs forfeiture he may be evicted but only in execution of a decree of Court. The Courts will not decree eviction except on any one of the four grounds mentioned in this section. Bnt it does not apply to Kanapattoms executed after the 25th Karkadagom 1042 which contain special agreements for redemption on failure to act up to certain terms (*a*).

(2) *Meaning of words.* "Holding" in this section includes only the land and not the trees standing thereon. The exercise, therefore, of the Jenmi's right of cutting down timber trees standing on the lands in the possession of the Kudiyan would not constitute eviction from a part of the holding (*b*).

(3) *Clause* (1) (*a*) is clause 3 of the Proclamation with the addition that the demand should be in writing. Some difficulty was felt in deciding *when* the demand mentioned in cl. (3) of the Proclamation should have been made; See *Cheriathu Mathan* v. *Kesavan Sreevasuthevan Numburipad* (*c*). The Proclamation did not lay down when the demand should have been made. It was, therefore, contended in that case that the express demand should be shown to have been made *after* the accumulation of the

(*a*) Section 42 and *Mani Ouseph* v. *Narayanan Krishnan Numbury*, I.U.T.D. Vol. I, page 7.

(*b*) *Raman Bhattathiripad* v. *Avira Varki*, 18 T.L.R. 95.

(*c*) 5 T.L.R. 77.

arrears for 12 years consecutively. But it was held that the provisions of the Proclamation were sufficiently complied with if the Jenmi made a demand *at any time within the* 12 *years during which the arrears accumulated* (*a*). This Section follows the decision in *Cheriathu Mathan* v. *Kesavan Sreevasuthevan Numburipad* (*b*) and enacts that the demand contemplated is one to be made *at any time after the first year's arrears shall have accrued.*

Under the Proclamation and under this Regulation too which superseded it, the non-payment of michavarom *per se* is not sufficient to work a forfeiture of the tenancy but the non-payment should have been *in spite of demand* (*c*). The object of the demand is only to shew that the Kudiyan's default to pay was intentional and to negative the "presumption" (if any) that the Jenmi encouraged the Kudiyan to withhold payment with the intention of depriving him of his occupancy rights (*d*). The demand would also give notice to the Kudiyan that the Jenmi intended to press his claims against him (*b*).

Where the Jenmom right is transferred and the transferee sues for eviction on the ground of non-payment of rent for 12 years, it is sufficient if the transferee shews that the Kudiyan has defaulted in the payment of rent for a period of 12 years to the person suing and his predecessor in title. The period of default has not to be computed from the date of the transfer (*e*).

An oral demand was sufficient under the Proclamation, but under this Regulation the demand should be in writing and it should be served on the Kudiyan by the Court of the District Munsiff within whose local Jurisdiction the holding is situated.

(*a*) *See* also *Kanakku Easwaran Kumaran* v. *Sankaran Chithirar Adithiri*, 8 T.L.R. 43 where similar contentions were raised but overruled.

(*b*) *Cheriathu Mathan* v. *Kesavan Sreevasuthevan Numburipad*; 5 T. L. R. 77.

(*c*) *Kottayil Varki Varidu* v. *Elayathu Sankaran Krishnan*, 8 T.L.R. 6; *Nethran Pappi Antherjenom* v. *Krishnan Narayanan*, 12 T.L.R. 101; and *The Dewan of Travancore* v. *Kanakku Nallaperumal Padmanabhan*, 13 T.L.R. 182.

(*d*) *Kanakku Easwaran Kumaran* v. *Sankaran Chithirar Adithiri*, 8. T. L. R. 43.

(*e*) *Nethran Pappi Antherjenom* v. *Krishnan Narayanam*, 12 T. L. R. 101.

No Court fee will be levied on this application of the Jenmi but the prescribed process fee must be paid (*a*).

To avoid forfeiture the Kudiyan is, on the Jenmi's failure to accept tender of the Michavarom, &c., allowed to deposit the same in Court (*b*).

(4) *Clause* (1) (*b*). This ground of forfeiture is not one of those mentioned in the Royal Proclamation and its inclusion in this Regulation was stoutly opposed during the discussion of the Bill in the Legislative Council. But the opposition was overruled by the narrow majority of one. It was thought necessary to protect the Jenmi's valuable right of renewal from the wilful and persistent refusal of the Kudiyan. To minimise, however, the risk of forfeiture and to protect the Kudiyan's right of occupancy the *explanation* to this clause was moved and accepted (*c*).

The right of permanent occupancy conferred by Section 5 is, as has been said before, a right to continue in possession for ever by successive renewals at the end of every 12 years. On such occasions the Jenmi is bound to give and the Kudiyan is bound to accept a renewal of the lease (*d*). The neglect or refusal, therefore, of the Kudiyan to pay the renewal fees and take a renewal is a breach of his duty and is by this Regulation made a ground of forfeiture of the tenancy. The neglect or refusal should be in spite of the Jenmi's demand calling upon the Kudiyan to do his duty and *should not be due* to *bona fide* differences between them as to the amount of the renewal fees or as to the terms of the renewal.

The Kudiyan is given one year from the date on which the fees fall due to pay the same and take a renewal. Forfeiture is incurred only if, within this period, and 6 months after the service of a notice of demand on him, he neglects or refuses to pay the fees and take a renewal. Thus, where the Kanapattom deed is dated 5th Thulam 1050, the renewal should be on 5th Thulam 1062, but the Kudiyan can pay the renewal fees (in the absence of any written agreement to the contrary) on or

(*a*) See Section 7, cl. 2.

(*b*) See Chapter III, Part B.

(*c*) See the Proceedings of the Legislative Council dated 14th December, 1894.

(*d*) Section 11.

before the last day of the year 1062 (*a*). The Kudiyan incurs forfeiture only if he neglects or refuses to pay the fees and take a renewal before the end of 1063.

The notice of demand under this clause should, like the one in cl. 1 (*a*), be in writing and served in the same manner (*b*).

In cases where the neglect or refusal has taken place before this Regulation came into force (*i. e.*, 1st Makaram 1072) the Jenmi obtains the right to evict the Kudiyan only if the neglect or refusal has been continued for one year after 1st Makaram 1072 and 6 months after the service of the notice of demand. The burden of proof of these facts is on the Jenmi.

(5) *Clause* 1 (*c*). To make the possession of the Kudiyan adverse to the Jenmi it is not enough to merely deny the Jenmi's title but it must also be shewn that the Jenmi was aware of such denial. Where a mortgage or lease is for a fixed term the denial by the mortgagee or lessee of his mortgagor's or lessor's title during such term will not avail him to make the possession immediately become adverse. But where such denial is after the expiry of the term and to the definite knowledge of the mortgagor or lessor, the mortgagee or lessee can set up adverse possession from the date of mortgagor's or lessor's knowledge of the denial (*c*). The difference in the starting point of adverse possession is due to the mortgagor's or lessor's right to obtain present possession. Where there is a term the suit for recovery of possession can only be instituted after the termination of the term and till then the possession of the mortgagee or lessee will not be adverse. But where the term has expired and in cases where there is no term the mortgagor or lessor may sue for possession immediately the mortgagee or lessee denies the former's title and hence the possession after such denial will be considered to be adverse from the date of the owner's knowledge of the denial of title. It has been ruled that the principle laid in the cases (*c*) quoted above applies to Kanapattoms also (*d*).

(*a*) *See* Section 17, para 1 (*c*); *See* also A. S. 289 of 1081 and S. A. 276 and 277 of 1084 (unreported).

(*b*) *See* Sec. 7, cl. (2).

(*c*) *Varki Mathoo* v. *The Dewan of Cochin*, I. U. T. D. Vol. I, page 314 followed in A. S. 203 of 1082 (unreported).

(*d*) S. A. 163 of 1082 (unreported).

The explanation restricts the application of this clause to a very limited number of cases. A denial not under a mistake of law or fact must be of very rare occurrence. Even such cases are relieved against by this clause which lays down that the denial must be continued to the first hearing of the suit for eviction. Till that moment the Kudiyan is allowed to change his mind and acknowledge the title of the Jenmi. When he lets this last chance go by and persists in his denial of title, then the Kudiyan has renounced his character as such and it is evident that he does not intend to make any payments involving as they do, an acknowledgment of the Jenmi's title. This clause and sections 9 and 10 will shew how solicitous the Legislature has been to protect the interests of the cultivating tenants; see also the Proceedings of the Legislative Council dated 14th December, 1894 when a motion was made for omitting this clause from the Bill but failed for want of one to second the motion.

This clause and clause (*d*) were not expressly provided for by the Royal Proclamation. But as that Proclamation did not profess to deal exhaustively with the subject and as its object was only to "secure freedom from arbitrary eviction" to the Kudiyans, the omission was not very material. The customary law was affected by the Proclamation only in the one particular—arbitrary eviction—and the Courts found that the Jenmis enjoyed from very ancient times the right of ejecting their tenants on the grounds contained in clauses (*c*) and (*d*) of this Section (*a*).

(6) *Clause* (1) (*d*). A Kudiyan who committed waste incurred forfeiture (*a*). The customary law before the date of the present Regulation is thus stated in *Krishnan Krishnan Potti* v. *Kelan Uli* (*b*) "* * * a tenant committing wilful waste by cutting down fruit-bearing and valuable trees without the consent of Jenmi, does, thereby, incur forfeiture, but we think it inequitable to lay down that the cutting of any kind of tree, amounts to such wilful waste. If the tree belonged to the Jenmi or were of such a description as to cause material injury to the reversionary interests of the Jenmi, the tenant may then be said to have been guilty of such act as would be sufficient, under the customary law,

(*a*) *Easwaran Sridharan Potti* v. *Kumaran Padmanabhan*, 1 T.L.R. 80.
(*b*) 2 T.L.R. 18.

to work a forfeiture of the lease, but if the trees are those planted by the tenant himself and could be easily replaced without causing any diminution in the profits which every Jenmi has a right to expect at the periodical renewal of leases, the tenant does not, by reason of the cutting of such trees, render himself liable to be evicted, if he can be shewn to have acted, generally, in a husband-like manner and improved the property."

In strict legal theory the Jenmi is the owner of the soil and of everything growing thereon. Even the trees planted by the Kudiyan belong to the Jenmi, the Kudiyan being only entitled to enjoy the usufruct and to be compensated at the time of eviction for the planting of those trees. The Kudiyan had at first a right of occupancy for a limited period only. When the Kanapattom tenure became a permanent one the Kudiyans being in possession of the property had always the upper hand of the Jenmi. As the produce of the gardens depended largely upon the amount of care taken of the trees, the slightest neglect of the Kudiyan caused a large and serious fall in the produce. The Jenmi could hardly interfere as the neglect was not always visible to the eye and in the second place, the Kudiyan was not guilty of voluntary waste. A practice, therefore, sprung up by which the Kudiyan was absolutely prohibited from cutting down three classes of trees, *viz.*, cocoanut, arecanut and the jack, but was allowed to cut down for fuel, etc., trees other than those yielding valuable timber. The absolute prohibition with respect to the three classes of trees above-mentioned was because they alone were taken into account in estimating the Jenmi pattom. This practice was later on slightly modified in the manner laid down in *Krishnan Krishnan Potti* v. *Kelan Uli* (*a*) quoted above. The present Regulation goes a step further. With the grant of permanent occupancy-rights it is to the Kudiyan's interest to protect the fruit-bearing trees as much as possible and he may be expected to do so. On the other hand, to protect the Jenmi's interests it is not necessary to prohibit absolutely the felling of all kinds of fruit-bearing trees, for, it may sometimes be good husbandry to sacrifice some trees to save the others or improve the produce. The Jenmi's interests would be sufficiently protected if the absolute

(*a*) 2 T. L. R. 18.

prohibition is limited to trees yielding valuable timber. Dead cocoanut and arecanut trees and trees of spontaneous growth not yielding valuable timber are usually cut by the Kudiyans and the Jenmis do not generally object to the same. The present Regulation does not affect this practice.

This clause refers only to voluntary waste. The waste must be such as to permanently and materially impair the value and utility of the holding. The cutting down of jungle growth which is necessary to bring the land under cultivation is no waste (*a*).

(7) Clause (2). Written demands and notices are provided for in clause 1 (*a*) and (*b*) and clause 3.

(8) Clause (3). The provisions of this clause are imperative. If the Jenmi brings a suit for eviction without having followed the provisions of this clause, the suit will be dismissed. But the omission to follow the procedure laid down here is no bar to a suit by the Jenmi for the recovery of damages for the waste committed by the Kudiyan.

To enforce forfeiture of a Kanapattom in the possession of a Marumakkatayam tarwad the notice referred to in this section must be served on the Karnavan of the tarwad and not on an Anandravan who holds the property under the orders of the Karnavan (*b*).

(9) Clause (4). This was the Customary law before the Regulation (*c*). Till the late of eviction the Kudiyan is, of course, liable to pay Michavaram and customary dues.

Compensation for improvements how estimated.

8. (1) The compensation to be awarded for items of improvement (*a*), (*b*), (*d*), (*e*) and (*f*) in clause 14 of section 3 shall be the estimated full cost of such improvements *minus* any deduction for wear and tear; and the compensation for item (*c*) shall be three-

(*a*) A. S. 136 of 1073 (unreported).

(*b*) S. A. 282 of 1073 (unreported).

(*c*) *Easwaran Sridharan Potti* v. *Kumaran Padmanabhan*, 1 T.L.R. 80; *Cheriathu Mathan* v. *Kesavan Sreevasuthevan Numburipad*, 5 T.L.R. 77; *The Dewan of Travancore* v. *Kanakku Nallaperumal Padmanabhan*, 13 T.L.R. 182 and *Sankaran Velayudhan* v. *Janardhanan Narayanan Numburipad*, 14 T.L.R. 111.

fourths of capitalized value of the product of the trees other than wild trees of spontaneous growth, unless the Jenmi proves that, by local usage in respect of Jenmom lands, the compensation to be awarded to the Tenant for trees is less than three-fourths.

(2) In awarding compensation for improvements any reduction or remission of rent or any other advantage given by the Jenmi to the Kudiyan in consideration of the improvement shall be taken into consideration; and no compensation for an improvement shall be claimable when the Kudiyan has made the improvement in pursuance of a contract in writing binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

Notes. (1) *Object.* The reasons which induced the Legislature to award the Kudiyan the larger share of the value of the trees are probably that he employed his capital and labour in making those improvements and also the fact of the loss of profits which he expected to realise from them.

Before the date of this Regulation the Kudiyan's share was not uniformly three-fourths. In North Travancore especially, the Kudiyan's share was only one-fourth (*a*) but even there the rate was a varying one (*b*).

(2) *Present law.* This section sweeps away all the varying rates and gives the Kudiyan three-fourth of the value of trees, except in cases where the Jenmi proves that, by local usage, such share is less. It is three-fourths of the *value* of the trees *at the time of eviction* and not the value *at the last renewal* that should be awarded to the Kudiyan (*a*). In the case of

(*a*) *Sankaran Velayudhan* v. *Janardhanan Narayanan Numburipad*, 14 T.L.R. 111.

(*b*) *Kelan Madhavan* v. *Kandan Svaran Numburpad*, 1 T.L R. 108.

buildings, the Kudiyan is awarded the full value minus any deduction for wear and tear.

(3) *Method of valuation.* (*a*) Buildings.—The value of the materials such as timber, brick, etc., must be fixed according to the rates at the time of valuation, for an attempt to fix their value according to the price at the time of construction of the building would often be futile for want of reliable data (*a*). A Kudiyan cannot be allowed the option to remove a building after valuation through a Commissioner (*b*). This ruling applies only to buildings which do not fall within the meaning of the term "improvements," in Sec. 3, cl. (14). If they are "improvements" the Jenmi is bound to pay for them and consequently the Kudiyan is bound to surrender them, as the improvements go with the holding.

(*b*) Trees (bearing).—The method of valuing trees is laid down in *Isakki Isakki* v. *Bheeman Kulasekharan* (*c*). The trees unlike the land in which they grow are not everlasting. "The value of a tenant's labour and expense in the planting of trees, is sufficiently represented by a sum which, if invested at the ordinary and market rate of 12 per cent. interest, would yield the *pattom* or annual letting value which the tenant has been instrumental in producing for the future benefit of his landlord." (*d*). Cocoanut trees are classified into bearing trees and non-bearing trees. There is no third class, *viz.*, "trees just come to bearing" in the assessment of the value of improvements (*e*). The tenant is entitled to the value of the trees as they are and not as they ought to have been. Close planting might be a reason for *reducing* the value of improvements but not for disallowing the value altogether (*f*). This section speaks of the "capitalized value of the product of the trees." The term "product" is vague and may mean (i) gross produce, (ii) net produce after deducting the cost of

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(*a*) A. S. 334 of 1081 (unreported).

(*b*) S. A. 228 of 1081 (unreported).

(*c*) 10 T. L. R. 7 followed in *Sankaran Velayudhan* v. *Janardhanan Narayanan Numburipad*, 14 T.L.R. 111 ; *Gurupatham Abraham* v. *Kesavan Sankara Narayanaru*, I. U. T. D. Vol. I, page 9 ; *Lakshmi Kunji Pillay* v. *Pappi Karthiyayani.*, I. U. T. D. Vol. I, page 54.

(*d*) (c) at page 11.

(*e*) A. S. 94 of 1083 (unreported).

(*f*) A. S. 115 and 133 of 1081 (unreported).

manuring and other cultural operations, (iii) net produce after deducting the Sirkar tax or, (iv) what the landlord can expect to get as rent or income. But as used in this section it has the fourth meaning and not "gross or net yield" (*a*). In fixing the amount of letting value or pattom, the tax payable to the Sirkar in respect of the trees should not be left out of account. A mode of capitalization in which the Sirkar tax is omitted to be taken into account is wrong. "However sound such a mode may be in fixing the value of property for the purposes of sale, the principle cannot justly be extended to cases where the object of the valuation is the ascertainment of compensation to the tenant for the labour and the capital employed by such tenant in the planting of trees." (*b*) It is the actual Sirkar tax that should be deducted and not any hypothetical tax (*c*). One-fourth of the yield is generally deducted for Sirkar tax and maintenance (*d*). In capitalizing, the average price for 12 years is the preferential basis (*e*).

(*c*) Non-bearing trees—The tenant is entitled to the full value of the trees which have not begun to bear fruits, because the full benefit of the produce of those trees goes to the landlord (*f*).

(4) (i) "*Wild trees of spontaneous growth*" is not defined in this Regulation. The words should, therefore, be interpreted in their ordinary or generally understood sense. The terms "wild" and "spontaneous" as applied to "trees" mean practically the same thing. They mean "produced by unassisted nature; without culture or without human labour." The trees on which the Sirkar levies a tax are presumed to be valuable and *cultivated* by the people for profit. The trees which may be presumed to be "wild trees of spontaneous growth" are those on which the Sirkar does not levy a tax.

(*a*) A. S. 111 of 1081.

(*b*) *Isakki Isakki* v. *Bheeman Kulasekharan*, 10 T.L.R. 7 at page 10.

(*c*) A. S. 260 of 1082 (unreported).

(*d*) *Gurupatham Abraham* v. *Kesavan Sankara-Narayanaru*, I.U.T.D. Vol. I, page 9.

(*e*) A. S. 222 of 1081 and A. S. 33 and 38 of 1081 (unreported).

(*f*) A. S. 364 of 1081 (unreported). See also *Sankaran Velayudhan* v. *Janardhanan Narayanan Numburipad*, 14 T.L.R. 111 and *Gurupatham Abraham* v. *Kesavan Sankara Narayanaru*, I.U.T.D., Vol. I, page 9.

(ii) *Wild trees classified.* Wild trees of spontaneous growth may be classified under two heads, *viz.*, (1) those yielding valuable timber, and (2) those not yielding valuable timber.

(iii) A Kudiyan is not entitled to wild trees of spontaneous growth standing on the Jenmi's land. The Jenmi alone has the right to such trees (*a*).

The Kudiyan is entitled only to cut down the branches of trees and trees not yielding valuable timber for use as fuel or other domestic purposes (*b*). A Kudiyan cannot cut down valuable timber trees such as Anjilly, Benteak, etc., his right being limited to receiving compensation, if such trees were planted by him (*c*). The right to be paid compensation does not confer upon the tenant a right to fell the trees without the Jenmi's sanction. If trees are felled by the Kudiyan without such sanction, his act is a tortious one (*d*).

(iv) The Jenmi can at any time cut the timber trees, especially timber trees classed as of spontaneous growth, after giving notice to the tenant and offering him fair compensation at the usual rates prevailing in the locality, if the trees are either planted *or reared* by the Kudiyan (*c*). The correctnes of the italicised portion in the above ruling is doubtful (*e*).

(v) A Kudiyan will be awarded compensation for wild trees of spontaneous growth only when it is shewn that they have been planted and reared by him (*f*). The burden of proof in such cases is on the Kudiyan (*g*). But unlike the general rule as to the tenant's share in the case of fruit-bearing trees such as cocoanut, etc., the planter's share in timber trees is only one-fourth (*h*).

(*a*) *Chacko Eli* v. *Narayanan Numbury*, 3 T.L.R. App. 35.

(*b*) *Raman Bhattathiripad Avira Varki*, 18 T.L.R. 95, followed in *Thomman Devasya* v. *Naraynan Naraynan Bhattathiri*, I.U.T.D.Vol. II, page 326.

(*c*) *Raman Bhattathiripad Avira Varki*, 18 T.L.R. 95.

(*d*) *Thomman Devasya* v. *Narayanan Narayanan Bhattathiri*, I.U.T.D. Vol. II, page 326.

(*e*) See the notes under Sec. 3, cl. (14) page.

(*f*) A. S. 111 of 1081 (unreported).

(*g*) S. A. 175 of 1082 and A. S. 210 of 1082 (unreported).

(*h*) *Raman Bhattathiripad* v. *Avira Varki*, 18 T.L.R. 95 *and* S. A. 285 of 1083 (unreported).

(vi) As the compensation to be awarded to the Kudiyan is not limited to the fruit-bearing trees alone but extends to valuable timber trees also planted by him, the question what are "valuable timber trees" is of great importance. The decisions of the Courts as to what are and what are not valuable timber trees have not been uniform. Tenants have been awarded compensation in some cases but refused in some others. Anjilly (*arto-carpus hirsuta*) is a valuable timber tree and is presumed to be of spontaneous growth but not always so (*a*). But the mango trees (*Mangifera indica*) are, according to the decisions, considered valuable only in Trivandram and its neighbourhood and in South Travancore. In those places the Jenmi must pay for these trees (*b*). In North Travancore, mango trees are presumed to be of spontaneous growth and are not generally considered valuable (*c*). It is not quite correct to say that the mango and tamarind trees are not valuable trees in North Travancore. Though they are not generally planted or reared by the Kudiyan who confines his attention to cocoanut, arecanut and jack trees, they grow in spite of the want of attention and are of great use to their owners. The grounds which justify the award of compensation to the Kudiyan for the planting of mango, laurel and tamarind trees in South Travancore (*d*) may justifiably be held to be present in North Travancore too. Bamboo and Talipat cannot be classed as wild growths (*e*). The margossa is a tree of spontaneous growth (*f*). *Punku, Konna, Nelly, Poovannu, Vagai, Parankimavu* and *Punna* are trees of spontaneous growth but not always so (*g*). At pages 44 and 45 of the Unrepealed Regulations of Travancore, Vol. II (1910 Edition), is given a list of trees published under section 32 of the Forest Regulation (II of '68).

(*a*) *Raman Bhattathiripad* v. *Avira Varki*, 18 T. L. R. 95, followed in *Thomman Devasya* v. *Narayanan Narayanan Bhattathiri*, I. U. T.D., Vol. II, page 326.

(*b*) A. S. 294 of 1080; see also A S. 207 and 228 of 1077 and Order on C. M. P. 299 of 1078.

(*c*) A. S. 193 of 1081 (unreported) and *Vasudevan Vasudevan Numbury* v. *Ippu Ippu*, I. U. T. D. Vol. II, page 285.

(*d*) A. S. 294 of 1080 and Proceedings (Civil) No. 88 of 1081.

(*e*) A. S. 119 of 1080 and A. S. 144 of 1081 (unreported).

(*f*) A. S. 29 of 1081 (unreported).

(*g*) S. A. 216 of 1075 and A. S. 12 of 1077 (unreported).

That section enables the Dewan to notify the names of trees (not being Royalties) which shall not be felled without the permission in writing of the Conservator of Forests or of an officer authorized by him in writing in that behalf. The Government apparently considers trees included in that list as valuable timber trees when found standing on Sirkar land and the Courts may reasonably adopt the list and act on it.

(5) *Waste committed after decree for eviction.* If after a decree for eviction the Kudiyan commits waste, the Jenmi who is required to pay the Kudiyan the value of improvements effected on the property, has the right to demand a reduction for the waste committed. The Jenmi is entitled to have the property delivered to him in the condition it was when he obtained the decree for eviction. The damages on account of waste may be enquired into in execution *(a)*.

(6) The right to compensation or the amount thereof will depend upon the existence or otherwise of the facts mentioned in para 2 of this section.

Court to cancel forfeiture on payment of arrears into Court.

9. When the Kudiyan has incurred forfeiture for non-payment of Michavarom or renewal fees and the Jenmi sues to eject the Kudiyan—if, at the first hearing of the suit, which shall not take place within three months from the date of the service of the original summons in the suit, the Kudiyan pays into the Court the Michavarom and other dues in arrears together with the interest thereon and the Jenmi's cost of the suit, the Court shall pass an order relieving the Kudiyan against forfeiture: and thereupon the Kudiyan shall hold the land as if the forfeiture had not occurred.

Notes. This section and section 10 are new. When the Kudiyan once incurred forfeiture, the Royal Proclamation did not

(a) *Narayanan Narayanan* v. *Abda Rahiman Kunju*, 13 T. L. R. 133.

help him any further and the Courts decreed eviction (*a*). Even this bare possibltity of eviction was felt as a hardship by the Kudiyans and their supporters wished to prohibit eviction under any circumstances. The Legislature did not think it wise to deprive the Jenmis of a large portion of their property, but to satisfy the Kudiyans and to prevent forfeiture as far as possible, this section and Sec. 10 were enacted which gave the Kudiyans one more opportunity of avoiding eviction.

This section which relieves against forfeiture on grounds (*a*) and (*b*) of clause (1) of Sec. 7 applies only if the Kudiyan "at the first hearing of the suit" admits his liability and pays into Court all monies due with interest and the plaintiff's costs. But it does not apply to a case where the Kudiyan pleaded payment of Michavaram (*b*). Where a Court decreed the acceptance of a renewal by a Kudiyan on payment of the renewal fees and arrears of rent within two months from the date of the judgment and, in the alternative, forfeiture of property, but the decree not being ready within the said two months, the tenant was not able to ascertain the amount to be deposited, held that the delay cannot be made the cause of forfeiture (*c*).

Decree to declare amount of compensation in suit for ejectment of Kudiyan for waste.

10. A decree passed in favour of the Jenmi in any suit for ejectment of a Kudiyan on the ground that he has committed intentional and wilful acts of waste, shall declare the amount of compensation which would reasonably be payable to the Jenmi for the waste, and whether in the opinion of the Court the waste is capable of remedy, and shall fix a period during which it shall be open to the Defendant to pay the amount to the Plaintiff and,

(*a*), *Easwaran Sridharan Potti* v. *Kumaran Padmanabhan*, 1 T. L. R. 80; *Cheriathu Mathan* v. *Kesavan Sreevasuthevan Numburipad*, 5 T. L. R. 77; *Kanakku Easwaran Kumaran* v. *Sankaran Chithirar Adithiri*, 8 T. L. R. 43; *Krishnan Krishnan Bhattathiri* v. *Pyli Thomman*, 10 T. L. R. 132 and *Sankaran Velayudhan* v. *Janardhanan Narayanan Numburipad*, 14 T. L. R. 111.

(*b*) S. A. 160 of 1074 (unreported).

(*c*) S. A. 119 of 1075 (unreported).

where the waste is declared to be capable of remedy, to remedy the same.

If the Defendant, within the period fixed by the Court under this section, pays the compensation mentioned in the decree and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

Renewal of Kanapattom every twelve years.

11. In the absence of an express written contract to the contrary, on the expiry of a period of twelve years from the date of every Kanapattom, and thenceforward at the end of every successive period of twelve years, it shall be obligatory on the Jenmi to give and on the Kudiyan to accept a renewal of the Kanapattom, save and except in the cases mentioned in the next following section.

Notes. (1) The law laid down by this section is the customary law. The Kudiyan has the right to hold the land for 12 years at least from the date of payment of Adukkuvathoo (*a*). The Jenmi is bound to renew the Kanapattom, *i.e.*, the Kudiyan can compel him to renew; and the Kudiyan is bound to accept a renewal, *i.e.*, the Jenmi can compel the Kudiyan to accept one. The obligation is thus mutual.

(2) *Who may demand a renewal.* A Jenmi cannot be forced to divide his Michavaram and customary dues and give separate renewals (except where the holding has been split up) with respect to particular bits including in one entire holding (*b*). A mortgagee of the Kudiyan who has not attorned to the Jenmi cannot demand a renewal direct from the Jenmi in spite of the Kudiyan (*b*).

(3) *Right to renew, when barred by limitation.* The Kanapattom tenure being of the nature of a perpetual lease, the Jenmi's

(*a*) S. A. 114 of 1076 (unreported).
(*b*) *Kuncheriya* v. *Mathan*, 18 T.L.R. 161.

right to enforce renewal is not lost so long as the relation of landlord and tenant exists and unless the Kudiyan holds for the statutory period after some overt act of denial of the Jenmi's right. And, to give the Kudiyan the benefit of adverse possession it is not enough that he holds adversely but it must be shewn that the landlord had notice of the hostile claim set up (*a*). The Statute of Limitations does not begin to run until the prior possession of the tenant became wrongful and tortious. A Jenmi has no occasion to know or search for deeds executed by his tenants between themselves in derogation of his title, registration alone is not sufficient notice to the Jenmi (*b*); mere non-payment of rent too does not make the tenant's possession adverse (*c*). But where a Jenmi is a party to the escheat proceedings consequent on the death of a Kudiyan without heirs, his knowledge of the hostile nature of the possession claimed by a tenant who took the land on Pandarapattom from the Sirkar may be presumed (*d*). Or, where on the death of a Kudiyan without heirs the Sirkar who succeeded to his estate granted the property on Pandarapattom to other persons, arranging with them for the payment of Thiruppuvaram to the Jenmi, the receipt by the Jenmi for more than 12 years of the Thiruppuvaram allotted by the Sirkar is sufficient evidence that he had notice of the adverse possession of the Jenmom land by its present holder (*e*).

(4) *Renewal, when to be made.* The liability to be renewed is an incident of the tenure. The Royal Proclamation of 1042 gave statutory recognition to the right of the Jenmi to obtain a renewal. The right could be exercised, both by law and custom, at the end of every 12th year from the date of the lease or from the date of its last renewal. The right is, therefore, a recurring

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(*a*) *Parameswaran Venkatachalam Iyen* v. *Krishnan Vasudevan Numbury*, 16 T.L.R. 128.

(*b*) *Nilakantan Nilakantan Numburipad* v. *Aiyappan Parameswaran*, 17 T.L.R. 58; see also S. A. 250 of 1075 (unreported).

(*c*) S. A. 212 of 1075 (unreported).

(*d*) S. A. 4 of 1076 (unreported).

(*e*) *Parameswaran Nilakantan* v. *Kanakku Velayudhan Krishnan*, 16 T.L.R. 172.

one and will afford a recurring cause of action (*a*). The Jenmi is entitled to sue within 12 years from the date on which he demanded and was refused that right (*b*). The right to enforce a renewal accrues at the end of every period of 12 years from *the date of the kanom demise* and *not from the date of the final decree* in a suit for renewal (*c*). And the renewal decreed must have reference to the expiry of 12 years from the date of last renewal and not to the date of the Court's decree (*d*). Thus in a suit brought on 18th Feb. 81 for the renewal of a Kanapattom deed of 16th Dec. 57, the decree was passed only on 20th Aug. 82, *i.e.*, after the renewal deed sued for had become useless and after a new cause of action accrued to the Jenmi for a fresh renewal. The Jenmi (plaintiff) prayed that the suit be considered to be one for renewal on the cause of action which accrued subsequently. The Court held that the suit which was brought to get a renewal deed accepted for the 12 years term between 69 and 81, could not be converted into a suit for obtaining a renewal deed accepted for a different term of years between 81 and 93, simply because the former term expired pending suit (*e*).

(5) *Suit for renewal—Burden of proof.* In a suit for renewal where the Kanapattom set up by the plaintiff-Jenmi is denied by the Kudiyan, the burden of proving the Kanapattom is on the plaintiff-Jenmi and not on the defendant-Kudiyan (*f*). The Jenmi may, however, in such a suit rely upon the Kanapattom pleaded by the defendant-Kudiyan, even though he failed to prove the one set up by him in the plaint (*g*). The Jenmi is entitled to a decree for renewal of the Kanapattom proved in the case even if it be different from the one alleged in the plaint. If there is a fair presumption of an original Kanapattom lease from the plaintiff-Jenmi's *madom* and if a derivative title of the present possessor

(*a*) *Vasudevan Raman Numburipad* v. *Nilakantan Madhavan Numbury*, 2 T.L.R. 49.

(*b*) *Nilakantan Nilakantan Numburipad* v. *Ayappan Parameswaran*, 17 T.L.R. 58.

(*c*) S. A. 68 of 1079 (unreported).

(*d*) A. S. 51 of 1082 (unreported).

(*e*) A. S. 332 of 1083 (unreported).

(*f*) S. A. 180 of 1075 (unreported).

(*g*) *Kanakku Chakran* v. *Raman Velayudhan*, 17 T.L.R. 38.

under the Kanom lease is proved, the occupant may be required to prove the terms of the tenancy, as the Kanapattom deed or deed of transfer of the same would be in his possession (*a*). If the relationship of Jenmi and tenant is found to exist, the presumption is that it still continues (*b*) and the Jenmi is entitled to demand a renewal notwithstanding his failure to prove the last lease (*c*). But the mere fact that the plaintiff is a Jenmi and that the defendant holds the property on Kanapattom will not entitle the plaintiff to a decree for renewal. There must be some reliable evidence of their mutual relation as Jenmi and tenant (*d*). Where the Sirkar registry shews that the lands were held on Kanapattom from a Jenmi either by the tenant's ancestors or others under whom the tenant claims to hold, the burden of proving that the tenant holds under a tenure other than the Kanapattom found in the registry and on different terms is on the Jenmi (*e*). Where a tenant admits the Kanapattom lease but disputes the correctness of the boundaries given in the plaint, the burden of proving that they are incorrect is on him (*f*).

(6) *Dispute among defendants as to who should take a renewal.* Where there is a dispute among the defendants *inter se* as to who is entitled to take the renewal from the Jenmi, the proper course will be to direct the party in possession to pay the arrears and dues claimed and to take a renewal in his name on behalf of all persons interested in the property, without determining the disputes between the defendants (*g*). Any competent member of a tarwad may obtain renewals from the Jenmi in the interests of the tarwad and the fact does not alter the nature of the rights held by the tarwad (*h*).

(7) *Amendment of the plaint in a suit for redemption.* A

(*a*) *Sankaran Numburi Chitran Adityiri* v. *Raman Bhagavathy*, 16 T.L.R. 168.

(*b*) A.S. 158 of 1076 (unreported.

(*c*) S.A 262 of 1076 (unreported).

(*d*) S.A. 122 of 1078 (unreported).

(*e*) A. S. 81 of 1078 following (*a*).

(*f*) C.M. Appeal 5 of 1080 (unreported).

(*g*) *Kanakku Thirumukhathu Chempakaraman Raman* v. *Krishman Narayanan*, 17 T.L.R. 25; followed in S.A. 211 of 1076 (unreported).

(*h*) A.S. 219 of 1074 (unreported).

suit by a Jenmi for redemption of a mortgage cannot be amended into one for renewal of a Kanapattom (*a*).

(8) "Where a tenant enjoys on Kanapattom more properties than one from the same Jenmi, the former should not be required to take more than one document and pay more than one set of customary fees for all such properties together " (*b*). Thus if two properties are held by a person under two documents from the same Jenmi, the Kudiyan can claim to have both the documents united into one. The total Kanom, the Michavaram, the Adukkuvathoo, and Olapanam or Opputhoosi in the Desoms where it is calculated at a fixed percentage of the Kanom, will not be affected by the two documents being so united into one. But in the Desoms where the Olapanam is a fixed sum per document and Onakalcha, Punchabhogam and other customary dues which are paid on every "holding," the rolling up of several documents into one will prejudicially affect the Jenmi's rights. The learned Judges who decided the above case (*b*) do not give their reasons but profess to follow two prior decisions of the High Court (*c*). The correctness of these decisions is doubtful. The following points do not appear to have been considered by the learned Judges. (i) The definition of the term "customary dues" in Sec. 3, cl. (12) shews that they are payable on account of each holding. If then, by uniting the two documents into one the terms of the two documents are not disturbed but only entered on one sheet of paper (*i.e.*, two contracts evidenced by one document), the necessity for the change is not apparent. But if by so uniting the two deeds the Jenmi is to be deprived of any portion of the customary dues he was getting till then, the procedure is not sanctioned by anything contained in this Regulation. (ii) Section 6 contemplates and sanctions the splitting up of a holding and the payment of Michavaram,

(*a*) S.A. 350 of 1078 (unreported).

(*b*) *Sankari Pilly Thangachi* v. *Pakaravoor Peria Swamyar*, 19 T.L.R. 68.

(*c*) S. A. 184 of 1070. The other decision is of 1059 and unreported. I have not been able to find out the number and year of the suit in which the decision was given.

customary dues, etc., by the several holders of the portions into which the holding may be split up. It has been held that when a partition of a holding takes place, renewals must be taken from the Jenmi on payment of the regular Avakasoms (*a*). Is the converse of a proposition of law always true? When a Jenmi demises on Kanapattom several properties to several persons and after some-time, all these properties came into the possession of one person, the Jenmi can, with justice, say that he created several "holdings" and that he is entitled to claim customary dues on each of those "holdings." Why the acts of third parties not assented to by him should deprive him of his just dues is not explained in the above ruling. Even where properties have been demised under several documents to one person, as the tenant has expressly contracted to pay several sets of fees, the "reason and logic" of relieving the Kudiyan of a burden which he knowingly undertook is not convincing. (iii) *Vasudevan Raman Numburipad* v. *Nilakantan Madhavan Numburi* (*b*) is a decision of the Royal Court of Final Appeal passed on 31st Adi, 1058. In that case the Court ordered the defendant to take renewals of two documents under which he was holding. This decision does not appear to have been noticed in the decision of 59 referred to above, but was followed in a later unreported case (*c*). S. A. 184 of 70 relies upon the decision of 1059 and does not notice (*b*) or (*c*). In the face of these authorities it cannot be said that the custom before the date of this Regulation was to so unite several documents into one.

(9) *Kudiyan dying without heirs.* When the Sirkar succeeds to the estate of a Kudiyan dying without heirs it acquires no more rights than what the deceased had, *i.e.*, it obtains only the occupancy-right of the Kudiyan. The Sirkar is, therefore, bound to pay not only the Michavaram due to the Jenmi but also the renewal fees and customary dues as they fall due (*d*).

(*a*) A. S. 295 of 1074 (unreported).

(*b*) 2 T.L.R. 49.

(*c*) A. S. 65 of 1065.

(*d*) *The Travancore Sirkar* v. *Parameswaran Nilakantan*, 15 T. L. R. 168.

12. A Kudiyan may, at the end of twelve years from date of Kanapattom or of its last renewal, surrender in writing his holding to the Jenmi after six months' notice in writing, and claim refund of the Kanom. In such cases, the Jenmi shall not be liable to pay to the Kudiyan the value of the improvements and he shall not be bound to accept the surrender, unless the whole of the arrears of Michavarom and other dues, if any, are also tendered at the time of surrender.

Kudiyan may surrender his holding at the end of twelve years.

Notice under this section shall be served through the Munsiff's Court in the manner provided in section 7.

Notes. (1) *Antecedent Law.* Under the customary law the Kudiyan had the right of surrendering the lease and seeking the recovery of the Kanom but the offer to surrender must have been within a reasonable time before the expiry of the period of 12 years. The Jenmi had not the option to refuse to accept the surrender (*a*). The Kudiyan, if he had given timely notice of his intention, could enforce surrender by a suit (*b*) or he might in a suit for renewal by the Jenmi plead his willingness to surrender as a defence (*c*). The notice need not have been in writing.

(2) *Present Law.* This section makes a slight change in the customary law. The notice should be in writing and given at sometime clear six months prior to the expiration of the tenure (*d*), *i.e.*, the notice should be within eleven and-a-half years of the

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(*a*) *Vicar Apostolic of Malabar* v. *Narayanan Revi Numburipad*, 4 T. L.R. 44 F. B.; *Kuruvilla Ouseph* v. *Sankaran Parameswaran Numbury*, 13. T. L. R. 185 and *Janardhanan Raman Numburipad* v. *Devan Devan Numburipad*, 15 T. L. R. 25.

(*b*) *Vicar Apostolic of Malabar* v. *Narayanan Revi Numburipad*, 4 T. L. R. 44, F. B and *Janardhanan Raman Numburipad* v. *Devan Devan Numburipad*, 15 T. L. R. 25.

(*c*) *Kuruvilla Ouseph* v. *Sankaran Parameswaran Numbury*, 13 T.L.R. 185.

(*d*) A. S. 295 of 1078 (unreported).

date of the last renewal (*a*). The Kudiyan's willingness to surrender expressed in the written statement in a prior suit by the Jenmi for renewal fees is not sufficient notice on which the Jenmi can take action (*a*). Where a Kudiyan has failed to strictly comply with the requirements of this section, he is bound to accept a renewal (*b*). But when the right to demand a renewal and the renewal fees accrued at a time before this Regulation came into force, the Kudiyan may, without giving a written notice of his intention to surrender the holding successfully resist a suit for renewal and the fees and insist on redemption by the Jenmi (*c*).

Before the Kudiyan could compel the Jenmi to accept the surrender he must pay the arrears of Michavaram and other dues up to the time of the surrender. If the Kudiyan offers to surrender the property after the liability for renewal fees accrued, such offer cannot exonerate him from liability to pay the same (*a*). When the Kudiyan chooses to surrender the property without the consent of the Jenmi, the Jenmi is still entitled to his renewal fee. The question whether this fee is paid in consideration of the past enjoyment or in consideration of future enjoyment alone (*e*) is not now of much importance. The right of the Jenmi to levy renewal fees at the end of 12 years from the date of the Kanapattom or the last renewal has been recognised for a very long time (*f*). The renewal fees become payable without any demand from the Jenmi on the Kudiyan enjoying the land even for one day after the expiry of 12 years (*g*).

A Jenmi will not be required to obtain the express consent of all the members of a Malabar tarwad in the case of surrender by the Managing Karnavan (*h*).

It will be noticed that while irregular payments, dishonest contentions, or wrongful acts of the Kudiyan are no bar under

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(*a*) A. S. 308 of 1081 (unreported).

(*b*) S. A. 285 of 1075 (unreported).

(*c*) A.S. 205 of 1077 (unreported).

(*e*) *See* Govinda Pillay's Select Decisions, Part I, page 96.

(*f*) *Kuruvilla Ouseph* v. *Sankaran Parameswaran Numbury*, 13 T.L.R. 185, and *Janardhanan Raman Numburipad* v. *Devan Devan Numburipad*, 15 T.L.R. 25.

(*g*) A.S. 253 of 1082 (unreported).

(*h*) S.A. 224 of 1075 (unreported).

section 7, Cl. (4) to his getting the value of improvements when evicted, an honest Kudiyan who desires to surrender his holding, probably because he finds it too burdensome, is by this section deprived of the value of the improvements he has made on the holding. This provision might appear to be very unjust but is necessary in fairness to the Jenmi. If the Kudiyans were allowed to get the value of the improvements made by them on their holdings even in cases of voluntary surrender, the Jenmis will, at the time of the periodical renewals be at the mercy of their Kudiyans if a large body of them, with the object of compelling the Jenmi to grant more favourable terms, strike and offer to surrender their holdings. The Jenmi would find it impossible to find money to redeem so large a number of Kudiyans and even if he found it, he would find it impossible to secure new tenants for his fields and gardens. This provision is not prejudicial to the Kudiyan also. The Kudiyan being entitled to sell or mortgage his occupancy-right may be trusted not to voluntarily surrender a holding yielding him any profit. It is only when the holding is unsaleable because of its unproductiveness that the Kudiyan will think of surrendering. In such cases, the improvements would be trifling and their value next to nothing.

Arrears of Michavarom and renewal fees to have priority over other charges.

13. Arrears of Michavarom and renewal fees due to the Jenmi shall be a charge on the holding of a Kudiyan and shall have priority over all other charges on the same, save arrears of tax due to Government.

Notes.—(1). *Antecedent Law.* The customary law before the date of this Regulation was thus laid down by Mr. Justice Kunhiraman Nair in *Nambiathan Nambiathan Bhattathiri* v. *Mathoo Varid* (a), "the right of lien claimed by the Jenmi is inherent in the Kanom tenure itself. The origin of Kanom (if I understand its early history correctly) was the desire of Jenmis to possess themselves of some fund belonging to tenants as a guarantee against any loss if the tenants failed to pay their rents.

(a) 4. T.L.R. 76. F.B.

Malabar and Travancore split up into a number of petty kingdoms, the area of which did not exceed in several instances that of a single modern Proverthi, afforded facilities for escape from one jurisdiction to another and the Jenmis of ancient days, instead of enforcing the law of distraint as the landlords in other parts of India (and it is remarkable that such law is unknown in these parts among the Jenmis) insisted upon the tenants making an advance which was known as Kanom and was originally intended as a security for the due payment of the rent reserved in the lease, * * * *. The researches of early records by competent men have brought to light the fact that the amount advanced as Kanom in ancient times did not generally exceed one or two year's rent."

(2) *Present Law.* This customary right of the Jenmi has received legislative recognition by this section. The Jenmi's claim is not affected by the subsequent proceedings of the Sirkar in assessing a portion of the lands at the full pattom rates as if it belonged to the Sirkar (*a*). Even after partition among tenants, the entire holding will continue to be liable for the whole of the rent, in the absence of Jenmi's consent in writing (*b*). The arrears of Michavarom being a charge on the holding on which it was due, the purchaser of the Kudiyan's rights at a Court sale can only take the property subject to the liability of the land for the arrears with interest. A Jenmi cannot, therefore, be compelled to surrender a holding which he brought to sale for arrears of Michavaram and got possession of through Court even though the purchaser of the Kudiyan's rights offer to pay up the arrears of Michavaram. The latter must bring a separate suit for the restitution of his kanomdar's rights (*c*).

The section makes arrears of Michavaram and renewal fees alone a charge on the holding. The omission of "customary dues" is evidently accidental. For, section 33 which provides for the recovery of the various dues of the Jenmi and contemplates the passing of a decree against the holding includes "customary dues." Before this Regulation the customary dues

(*a*) S. A. 116 of 1073 (unreported).
(*b*) A. S. 289 of 1081 (unreported).
(*c*) S. A. 279 of 1073 (unreported).

were a charge on the holding (*a*). Another fact which leads to the same conclusion is the provision in Art. 109 of the schedule to the Limitation Regulation which allows a period of 12 years for the recovery of the arrears under all the three heads—Michavaram, renewal fees and customary dues.

Enhancement of Michavarom.

14. Subject to the limitations and conditions prescribed in Chapter III, every Jenmi may, at the time of periodical renewals of Kanapattom, enhance the Michavarom payable by a Kudiyan,

(1) (*a*) by increasing the Pattom assessment on the land,

(*b*) by reducing the rate of interest allowed to the Kudiyan on the Kanom money, if such rate is in excess of the rate usually allowed to Kudiyans holding on Kanapattom in the same Proverthy,

(*c*) by both the modes (*a*) and (*b*); or

(2) where the Jenmi has hitherto been levying additional Kanom (or Ettartham) in lieu of enhancing the Michavarom, he may continue to do so at the customary period.

Provided that no Jenmi shall, without the consent of the Kudiyan, be entitled to enhance the Michavarom and levy Ettartham at one and the same time.

Notes.—(1). The "limitations and conditions" referred to in this Section are contained in Sections 21—25. (2) *Antecedent Law.* The customary law allowed the Jenmis to re-adjust the terms of the tenancy at the time of periodical renewal of Kanapattoms and clause (2) of the Proclamation sanctioned it. The Jenmi was entitled to a re-adjustment and enhancement of rents on every kind of land, whether gardens

(*a*) *Minchara Swamyar* v. *Thanu Krishnan Narayanan*, 9 T. L. R. 204.

or wet lands, provided the land was capable of bearing the burden (*a*). The enhancement was effected (i) either by enhancing the Jenmi pattom or customary rent whenever the land was capable of yielding the enhanced pattom, or (ii) by reducing the rate of interest allowed to the Kudiyan on the Kanom (*b*). The practice of indirectly enhancing Michavaram by the levy of Ettartham was also recognised (*c*). But the Jenmi was not permitted to enhance the Michavaram and claim at the same time the additional Kanom called *Ettartham*. Both these claims are based upon or rather arise out of the Jenmi's customary right to participate in the increased productiveness of the soil and *Ettartham* is nothing more than the capitalized value of the enhanced Michavaram which the Jenmi is entitled to get at each renewal (*d*). The practice of levying *Ettartham* is prevalent in the Trivandrum and Padmanabhapuram Divisions. The sum usually paid was small. The amount was not calculated on any principle and appears to have been, like the enhancement of Michavaram, the result of compromises between the Jenmi and the Kudiyan.

(3) *Present Law.* In describing the mode of enhancing Michavaram this section follows the customary law. An enhancement of Michavaram except in any of the modes recognised by this section will not be allowed. A Jenmi sued to be allowed to pay up the Kanom to the Kudiyan and for other reliefs. The attempt was to realise the full Jenmi pattom as Michavaram. The Court held that a suit of this nature was not maintainable (*e*). A claim for reduction of one-fourth of the Kanom and thereby increasing the Michavaram has not also been hithero recognised by the courts (*f*).

(*a*) *Padmanabhan Govindan Numburipad* v. *Kanakku Chandiran Govindan*, 2 T. L. R. 23 and *Padmanabhan Govindan Numburipad* v. *Kanakku Madhavan Udayan*, 2 I. L. R. 1.

(*b*) *Ittiravi Kunjan* v. *Narayanan Kesavan*, 9 T. L. R. 129.

(*c*) *Chakkiyamma* v. *Thanuvan Narayanan Potti*, 1 T. L. R. 95.

(*d*) *Nanaka Pillay Veloo Pillay* v. *Kesavan Kesavan*, 6 T. L. R. 138 and *Usenar Pillay Kutti Assen Kunju* v. *Kesavan Kesavan*, 9 T. L. R. 50.

(*e*) *Kantan Vasudevan* v. *Narayanan Velayudhan*, I. U. T. D. Vol. II, page 369.

(*f*) S.A. 327 and 333 of 1073 (unreported).

Mode 1 (*a*). One-fourth of the gross produce of the trees which began to bear after the last renewal may be fixed as the Jenmi pattom and the balance obtained after deducting the interest on the Kanom is the enhancement awardable to a Jenmi who sues for enhancement of rent (*a*).

Mode 1 (*b*). The question of interest is not one which may be decided with reference to the currrent rates in the money-market without reference to the nature of the security, especially in the case of investments in landed property (*b*). The safest course is to adhere to local rates (*c*). This might vary in different places.

CHAPTER III.

PART A. OF MICHAVAROM AND CUSTOMARY DUES.

Particulars of Kanapattom contract.

15. (1) In every contract of Kanapattom granted or renewed after this Regulation comes into force,

(*a*) the name, description and extent of the holding,

(*b*) the Pattom assessed on the holding,

(*c*) the deductions therefrom on account of interest on the Kanom money,

(*d*) the amount of Michavarom agreed upon,

(*e*) the renewal fees and customary dues intended to be levied from the Kudiyan, and the rate at which and the occasions on which they are to be levied, and

(*f*) if customary dues are commuted under section 26, the amount so commuted,

shall be distinctly specified.

(2) (*a*) If the Michavarom or other dues are made payable in kind, it shall be specified according

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(*a*) A.S. 189 of 1074 (unreported).

(*b*) A.S. 147 of 1073 (unreported).

(*c*) A.S. 139 of 1074 (unreported).

to the standard measure or parah prescribed by Our Government or which may be agreed upon between the parties.

(*b*) If any local parah or measure is used by the parties, the difference between it and the Government standard parah must be set forth in the Kanapattom.

(3) Registering officers shall refuse to accept for registration any Kanapattom instrument unless it shall contain the particulars above set forth. The order of the Registrar shall be subject to appeal according to the provisions of the Registration Regulation for the time being in force.

Notes. Under clause (2) of this Section the Government has notified in the Govt. Gazette, dated 20th Edavam 1072 that "the standard measure or parah prescribed by Government" is the Agrasala parah.

When suit or claim for renewal fees or customary dues to be entertained.

16. No summary suit or claim for enforcing payment of renewal fees or customary dues shall be entertained by the Courts under this Regulation, unless such fees or dues, as the case may be, are specified in the Kanapatam or its counterpart duly registered.

Exception.—Nothing in this section shall affect the Jenmi's right to recover summarily the renewal fees or customary dues under the existing Kanapattom though not expressly specified in the instrument of Kanapattom.

Notes. The benefit of the summary suit prescribed by Part C of this Chapter is limited to such fees and dues as are specified in the Kanapattom duly registered. If they are not so specified, a summary suit under this Regulation will not be maintainable, but the Jenmi is not precluded from maintaining an ordinary summary suit for the recovery of the same; see the

exception to this section. The difference is this. In the special summary suit prescribed by this Regulation a decree against the holding can be obtained, whereas in an ordinary summary suit no decree against immoveable property is obtainable.

A decree for renewal of a Kanapattom determines the terms of the tenancy and is as effective for that purpose as a deed duly registered. The omission, therefore, to execute a renewal deed in pursuance of the decree is no bar to the Jenmi recovering summarily, the Michavaram and other dues as settled by that decree (*a*).

Payment of Michavarom, renewal fees, &c.

17. Every Kudiyan shall pay his Jenmi the Michavarom, renewal fees and customary dues at such time and place as may be agreed upon between them in writing, and, in the absence of such written agreement, in the manner following, namely :—

(*a*) the annual Michavarom shall be paid on or before the thirtieth day of Audi of each Malabar year at the residence or at the granary (Sekarippoo) of the Jenmi, provided that such residence or Sekarippoo is within the Proverthy in which the holding is situated;

(*b*) customary dues, after demand—except in cases where they become due on recognized dates, such as Onakalcha.

(*c*) renewal fees on or before the last day of the year following the period when the renewal of the Kanapattom ought to take place under section 11.

Rate of interest in default of payment.

In default of such payment, interest shall be charged on the arrears from the date they become due, at the rate of 12 per cent per annum when the arrears are payable in money, and of 18 per cent, per annum when the arrears are payable in kind.

(*a*) A.S. 311 of 1083 (unreported).

Notes (1). This section lays down when and where the several payments to the Jenmi are to be made.

(2). *The place of payment.* The Jenmi's dues should be paid at such place as may be agreed upon in writing between him and the Kudiyan. Jenmis have their residences in the Proverthy in which the holding is situated and the wealthy Jenmis will generally have a granary or *Sekharippoo* in all the Proverthies in which they own property.

(3). *Who is liable.* Where there is no privity of contract, the Kudiyan alone is liable for the arrears of Michavaram and not the mortgagee of the Kudiyan (*a*). He is also primarily liable for the renewal fees, and other dues and the liability is not affected by the Kudiyan mortgaging his holding to another (*b*). The fact, that the purchaser of Jenmom rights, claimed rent from the original tenant does not absolve the assignee of the tenant who is a party on record from the obligation of paying such rent (*c*). Where there is privity of estate, the liability of the present holder of the property to the Jenmi admits of no doubt (*d*). In a suit for rent against the Karnavan of a Malabar tarward, the fact that the property leased to the tarward had been made over to a junior member for his maintenance does not make that junior member liable for the arrears, he not being privy to the lease but the tarwad and the Karnavan continue to be liable (*e*).

(4) *The date of payment.* The rent falls due year by year and the failure to pay affords a recurring cause of action (*f*). The Michavaram should be paid according to the agreement between the parties. When according to the terms of a Kanapattom deed Michavaram is payable every year, the contention of the tenant that, as the land is cultivable only in every alternate year the Jenmi cannot be allowed to claim Michavaram for the years, in which the land has been allowed to lie fallow is not

(*a*) S. A. 322 of 1073 (unreported).
(*b*) S. A. 311 of 1077 (unreported).
(*c*) S. A. 194 of 1074 (unreported).
(*d*) S. A. 231 of 1072 (unreported).
(*e*) S. A. 99 of 1073 (unreported).
(*f*) *Vasudevan Raman Numburipad* v. *Nilakantan Madhavan Nambury*, 2 T. L. R. 49.

sustainable (*a*). But where it is described to be payable *Kalam orandal* it does not mean that the Michavaram is payable every year. The expression is, like *Kalam moovandal*, a technical one used in Kanapattom deeds and they must be construed with reference to the subject-matter, *i.e.*, the land in each case. The expression means the period of each crop (*b*). In the absence of any agreement, this section provides that the Michavaram should be paid on or before the 30th day of Adi of *each* Malabar year. In certain parts of this State there are paddy lands which are not cultivated every year but only in alternate years. The Kudiyans of such lands paid Michavaram only every alternate year. I do not think that the Legislature intended to change this practice. The Kudiyan is bound to cultivate the land as other lands in the vicinity are cultivated. The Michavaram is due every year the land should have been cultivated and not only in the years in which the Kudiyans choose to cultivate the lands (*c*).

(5) *Abolition of petty cesses.* There were a large number of petty cesses paid by Kudiyans on behalf of their Jenmis to the Sirkar. The abolition of any of these, *e.g.*, *Paduthapalisa*, by Government does not exempt the Kudiyan from paying it to the Jenmi (*d*). The abolition by the Sirkar of the cess called *Rekshabhogam* paid to Government at the direction of the Jenmi by his tenant in the place of the *Jenmibhogam* due by the latter to the former does not operate to the benefit of the tenant who, in spite of the abolition, has to pay the *Jenmi bhogam* to the Jenmi. Nor does the commutation rate at which it was paid to the Sirkar by the tenant bind the Jenmi (*e*).

(6) *Interest on arrears.* This Regulation provides that interest shall be charged on the arrears in default of payment on the due dates. Under the customary law before this Regulation

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(*a*) S.A. 310 of 1073 (unreported).

(*b*) *Siwasankaran* v. *Nilakantan Numburipad*, 20 T.L.R. 1; followed in S. A. 17, 40 and 41 of 1082 (unreported).

(*c*) *Ouseph Chacko* v. *Jeyanthan Jeyantharu*, I.U.T.D. Vol. I, page 77.

(*d*) S. A. 368 of 1074 F. B. (unreported); *See* also *Nilan Ayappan* v. *Parameswaran Parameswran Numbury*, 15 T.L.R. 157.

(*e*). S.A. 48 of 1075 (unreported) following S.A. 368 of 1074 F.B. (unreported).

interest on arrears was awarded (*a*). When the Kanapattom deed provides for the payment of interest on the arrears at a particular rate, such rate should be allowed (*b*). It is only in the absence of any agreement in writing between the parties that the rate of interest allowed by this section is awarded. The rate of interest on grain allowed by this section is lower than the ordinary rate which has been held to be 20 p. c. per annum (*c*). The omission of the Jenmi to sue summarily every year is no reason to deprive him of the right to interest which is conferred on him by this section. It is the Kudiyan's duty also to deposit the rent in Court every year (*d*). A demand except in the case of customary dues is not necessary to let interest run (*e*). Under a proper construction of this Regulation, the Jenmi cannot be said to be under an obligation to execute the renewal deed as a condition precedent to the payment of the renewal fees. It is enough if he is ready to execute it to the rightful party (*f*). Sakshi is payable only when the transferee of the Kudiyan's rights takes a new document or is compelled at the Jenmi's instance to do so. From this date alone could the Jenmi claim interest on the Sakshi fees (*g*).

(7) *Remission of rent.* A Kudiyan has no right to demand a remission of rent on account of total or partial failure of crops. The Jenmi's dues are payable without reference to the nature of the season and the practice followed by the Sirkar with regard to its tenants cannot be extended to affect the Jenmis (*h*). This rule extends also to cases where a part of the demised lands is during the continuance of the lease rendered unfit for cultivation from causes which it is not in the power of the Kudiyans to prevent,

(*a*) *Minchara Swamyar* v. *Thanukrishnan Narayanan*, 9 T.L.R. 204, and *Kuruvilla Ouseph* v. *Sankaran Parameswaram Numbury*, 13 T.L.R. 185.

(*b*) *Narayanan Narayanan Numbury* v. *Samian Elichi*, I U.T.D, Vol II, page 567 following A.S. 161 of 1083 (unreported).

(*c*) (*b*) following S.A. 99 of 1081 (unreported).

(*d*) S.A. 8 of 1082 (unreported).

(*e*) (*b*) S.A. 22 and 27 of 1075 (unreported).

(*f*) S.A. 37 of 1076 ; A.S. 299 and 319 of 1082 and Civil Proceedings No. 8 dated 11-6-84 (unreported).

(*g*) *Mani Ouseph* v, *Narayanan Krishnan Numbury*, I.U.T.D. Vol I, page 7.

(*h*) *Oomma Pillay Sivaraman* v. *Sankaran Nambury*. 14 T.L.R., 68.

e.g., by exceptionally heavy floods (*a*). That the failure to pay michavaram was due to the circumstances of the land having been under attachment is no valid defence (*b*).

Jenmi to renew Kanapattom on payment of renewal fees.

18. On payment by the Kudiyan of the renewal fees together with any arrears of Michavarom which may remain unpaid for the whole or any portion of the expired period of 12 years, the Jenmi shall renew the Kanapattom and the Kudiyan shall thereupon execute a counterpart of such Kanapattom.

Provided that when a Kanapattom and its counterpart containing the particulars specified in section 15 and duly registered shall have been once before exchanged between a Jenmi and his Kudiyan, the parties may by mutual agreement dispense with the execution of a fresh Kanapattom and counterpart. In such cases a receipt for payment of renewal fees shall, if duly registered, be deemed to operate to all intents and purposes as a renewal of the Kanapattom.

Notes. Since the Kudiyans have been given the right of permanent occupancy there is no reason why, when once a contract of Kanapattom has been registered with all the particulars required by law and when no change in the terms is made at the subsequent renewals, the parties should be compelled to execute fresh deeds on stamp papers.

This Section confers on the Kudiyan the right to demand a renewal from the Jenmi. On payment of *Adukkavathoo*, &c., the Kudiyan acquires the right to hold the property for 12 years (*c*).

(*a*) *Vishnu Easwaran* v. *Narayanan Thrivikramaru*, 14 T.L.R. 23.

(*b*) *Nethran Pappi Antherjenom* v. *Krishnan Narayanan*, 12 T.L.R. 101.

(*c*) S. A. 114 of 1076 (unreported).

Contents of receipt for Michavarom.

19. Every Kudiyan paying Michavarom or customary dues shall be entitled to a receipt specifying

(*a*) the date of payment,

(*b*) the amount paid,

(*c*) the period for which it is paid,

(*d*) the holding in respect of which it is paid, and

(*e*) such other particulars as may be necessary to elucidate the transaction.

Revision of terms on renewal of Kanapattom.

20. (1) Every revision or re-adjustment of the terms of a Kanapattom at the end of 12 years shall be made by a contract in writing duly registered.

(2) If the parties cannot agree as to the terms of such revision or re-adjustment or as to the amount of additional Kanom or Ettartham, the Jenmi or the Kudiyan, as the case may be, may institute a regular suit in a Civil Court of competent jurisdiction for the purpose of compelling the other party to accept the terms proposed by him, or such other terms as to the Court may seem fit.

(3) Notwithstanding anything contained in the Stamp Regulation, no such contract of Kanapattom executed in renewal of a prior contract of Kanapattom shall be subject to stamp duty when the annual Michavarom reserved in such renewed Kanapattom does not exceed Rs. 50 in value.

(4) In the absence of an express contract to the contrary, the cost of stamp and registration of Kanom deeds shall be borne by the Kudiyan and the

cost of stamp and registration of counterparts or Kychits by the Jenmi.

Notes. *Clause* (1). Since all contracts of Kanapattom granted or renewed after this Regulation came into force are required by Section 15 to be in writing and duly registered, it is only proper to insist upon any revision or re-adjustment of such terms to be also in writing and duly registered.

Clause (2). A suit for the revision of the terms of the tenancy is maintainable either by the Jenmi or the Kudiyan. In such a suit the Kudiyan may claim remission of rent (*a*).

Clause (3). This clause is enacted for the protection of the poor Kudiyans who hold small parcels of land from the Jenmis. The principle of exempting agricultural leases of small holdings is recognised by the Stamp Regulation and this principle is extended to the Kudiyans in consideration of the peculiar circumstances of the renewal of Kanapattom leases.

When Jenmi entitled to claim enhancement of Pattom.

21. The Jenmi of a holding shall not be entitled to claim an enhancement of the Pattom assessment fixed under any existing Kanapattom except on one or more of the following grounds, *viz.*—

(*a*) In the case of paddy lands,

(1) that the area of the holding actually under cultivation is in excess of the area on which the Pattom was previously fixed;

(2) that the rate of current Pattom is below the prevailing rate for lands of a similar description and quality, with similar advantages in the same Elai or Muri and that there is no reason for the holding being assessed at so low a rate;

(3) that the productive powers of the land comprised in the holding as compared with those powers

(*a*) See Sec. 24.

at the time when the curreut Pattom was fixed, have increased from causes not merely temporary or casual.

(*b*) In the case of other lands, in addition to the foregoing grounds,

(4) that the number of trees in the holding on which Pattom is assessable has increased,

(5) that there has been a substantial rise in the average local prices of the produce of those trees during the currency of the previous Kanapattom.

(*c*) In the case of either description of land,

(6) that, after this Regulation comes into force the Kudiyan erects factories, shops or other buildings not being erections referred to in (*e*) of Explanation I to Clause 14 of section 3 and the annual rental value of the holding has thereby increased.

When the excess to the area under cultivation or the increase in the productive powers of the land is due to reclamation or other works of permanent improvement effected at the expense of the Kudiyan, the cost of such reclamation or other works of improvement shall be estimated and interest on the capital outlay so estimated shall be deducted from the difference between the old and new assessment and allowed to the Kudiyan at the same rate at which the interest on the Kanom money is allowed to the Kudiyan under the Kanapattom.

Where an enhancement is allowed on garden lands, Nadavukoor or deductions on account of the cost of planting and rearing the trees sought to be assessed with the Pattom, shall be allowed to the Kudiyan at such rate as may have been agreed upon

between him and the Jenmi, and in the absence of such agreement, at the usual rate prevailing in the Proverthy in which the land is situated.

Where enhancement is allowed on the ground mentioned in clause (6), the rental value shall be the annual rental of the building according to the rates prevailing in the neighbourhood less interest at 6 per cent per annum on the value of such building and the cost of maintenance.

Notes. (1). Sec. 14 lays down that subject to certain limitations a Jenmi may enhance Michavaram at the periodical renewal of leases. The "limitations" referred to are contained in Secs. 21—25.

(2) *Principle of enhancement.* The principle of enhancement of Pattom is based on the theory that the Jenmi being the owner of the soil is entitled to share with the tenant any increase in the productivenes of the land, whether brought about by the labour of the Kudiyan or not. When the difference between the old and the new productiveness is due to the labour of the Kudiyan he may claim compensation, but cannot refuse the Jenmi a share of the increased produce.

(3) *Enhancement of Pattom, when allowed.* One of the modes of enhancing Michavaram laid down by Sec. 14 is by increasing the Pattom assessment of the holding. The Pattom fixed under any existing Kanapattom may not be enhanced except on one or more of the grounds mentioned in this Section. In a suit for enhancement of Michavaram it is, therefore, not enough if the Jenmi shews that the existing Pattom is less than the maximum which may be fixed under Sec. 22. He must also prove the existance of any one of the grounds mentioned in this section.

(4) *Paddy lands.* In the case of paddy lands an increase of Pattom may be obtained in any one of the 3 ways mentioned in this section.

Ground (1). This may be due to a mistake in calculating the extent, or it may be due to the Kudiyan bringing more land

under cultivation. When the increase in extent is due to reclamation made by the Kudiyan he is entitled to the cost of such reclamation being estimated and interest thereon deducted from the difference between the current and the new pattom.

Where a part of the lands demised on Kanapattom was silted by floods of an exceptionally heavy nature and thereby rendered unfit for cultivation, the removal of such silt should be viewed as an improvement (*a*). No tenant is entitled to convert paddy land into garden without the consent of the Jenmi, especially if the conversion deteriorates the property. Where a property is thus converted without the consent of the Jenmi, the Jenmi pattom must be fixed with reference to the yield as it was before conversion (*b*).

Ground (2). This is because the Kudiyan cannot, in the absence of special circumstances, claim to be treated better than his neighbours and must pay the rate of pattom prevailing in the same Elai or Muri.

Ground (3). Where the increase is due to works of permanent improvement effected at the expense of the Kudiyan, the cost of such works will be estimated and interest thereon deducted from the difference between the current and the new pattom.

In South Travancore where, owing to the Kothayar Irrigation works, more lands are brought under cultivation or where one crop lands become two crop lands or where lands subject to failure of crops owing to insufficient supply of water are insured against that danger, the increase in the productiveness of the land cannot be said to be "from causes merely temporary or casual." In fixing the new pattom, however, credit must be given to the Kudiyan for the water-cess now levied by Government. This was not an "existing" tax but newly imposed for the use of the water and, therefore, the Kudiyan cannot be compelled to bear it under Sec. 22, Cl. (*d*).

(*a*) *Vishnu Easwaran* v. *Narayanan Thrivikramaru*, 14 T. L. R. 23.

(*b*) S. A. 151 of 1075 (unreported).

Where the increase in the productive powers of the land is due to the improved methods of agriculture adopted by the Kudiyan, *i. e.*, by the use of artificial manures or Professor Bottomley's Nitro-Bacterine or other scientific means, the increase cannot be said to be permanent.

5. *Other lands. Ground* 4. The penultimate clause of this section should be read along with this ground.

The enhancement of pattom is a point to be decided in accordance with the present yield of the trees (*a*). One-fourth of the gross produce of the trees which began to bear after the last renewal may be fixed as the Jenmi-pattom (*b*).

Ground 6. The grounds (1) to (5) for enhancement of pattom are either due to improvements effected on the holding or to the increase in the prices of the staple produce or due to a revision of the terms of the tenancy to bring it into line with those prevailing in the neighbourhood. These grounds have been laid down on the assumption that the tenant continues to be an agriculturist. But the progress of civilization has induced a large body of people to renounce agriculture and take to industries and commerce. The Kudiyans too have been affected by this change in the times. They have built shops and factories on their holdings in which to carry on business or to be let to others. The Jenmi may object to a use of the holding not in strict accordance with the terms of the tenancy and yielding a large annual income to the Kudiyan, but it is not always that he will succeed in shewing that such user affords grounds for eviction. Before the date of this Regulation a Jenmi was not entitled to claim enhancement of pattom with reference to the rents realised by the Kudiyan from the shops erected by him on the land, because when the Jenmi redeemed the property, he was not bound to take the property with the buildings on it and might require the Kudiyan to remove them (*c*). In such cases the Kudiyan's income was materially increased while the Jenmi—the owner of the land—, got nothing. To prevent this hardship, this clause adds another

(*a*) A. S. 147 of 1073 (unreported).

(*b*) A. S. 189 of 1074 (unreported).

(*c*) *Parameswaran Nilakandar* v. *Vengu Iyen Subbayyavu Iyen*, 10 T.L.R. 91.

ground for enhancement of pattom. The buildings referred to in this clause which increase the annual rental value of the holding are not "improvements" within the meaning of Sec. 3, Cl. (14), Exp. I (*e*), and, therefore, do not belong to the Jenmi. He is not bound to pay for them in cases of eviction. The Kudiyan can remove them at his pleasure but if he keeps them and derives an increased annual rent, he must share such increase with the Jenmi.

(6) *Nadavukur. The penultimate clause.* When an enhancement of pattom is allowed on garden lands *Nadavukur* on account of the trees sought to be assessed should be allowed to the Kudiyan. This practice existed from very ancient times. *Nadavukur* remissions were allowed on pandarapattam lands also till the practice abolished by the Proclamation instituting the recent Revenue Settlement (*a*). The origin of *Nadavukur* is the right of the Kudiyan to share in the increased produce brought about by his labour. It was as an inducement to extend and improve the cultivation of gardens that the land owners gave the tenants a share of the produce of the trees which their labour and money helped in raising. The share so allowed was called *Nadavukur*. The term literally means "the planter's share" (Nadavu=planting and kur=share). It was not uniform throughout the State. The share generally allowed by the Sirkar to their tenants was $\frac{1}{4}$ of the *Kantapattom, i. e.*, the pattom found at the time of the inspection of the garden, but there were cases where it was $\frac{1}{3}$, $\frac{1}{2}$, $\frac{2}{3}$, $\frac{5}{8}$ & 7/10. These reductions were not based on any principle. The Jenmi imitated the Sirkar and allowed similar reductions to his tenants. And this Regulation continues the practice in the case of Jenmis. The *Nadavukur* allowed by this clause being only on account of the trees sought to be assessed with pattom, it will not be an accurate and full estimate of the value of *all* the improvements made by the Kudiyan on the holding. Nor is it necessary to make so accurate or full an estimate of the value of the improvements at the time of periodical renewals. The necessity of such a valuation arises only when the Kudiyan is evicted. What was done at the periodical renewals was to ascertain the pattom or annual letting value of the garden. If it was fully planted up

(*a*) See para 9 of the Proclamation dated 24th February, 1886.

when the Kudiyan first got possession of it from the Jenmi, no claim for *Nadavukur* arose. But if the garden was not planted at all when the Jenmi demised it on Kanapattom, some trees planted and reared by the Kudiyan must have begun to bear at the time of the first renewal. The pattom or annual letting value of these bearing trees alone was calculated. A share of the pattom, fixed according to the custom prevailing in the locality, was given to the tenant. The balance of the pattom was considered to be the Jenmi pattom. From the Jenmi pattom interest on the Kanom was deducted and the residue was provided in the deed to be paid as Michavaram to the Jenmi. The share allowed to the Kudiyan was for compensating him for the labour and money spent by him in planting and rearing the trees which were assessed to pattom at the renewal. The share of the produce thus allowed to the Kudiyan was, in an indirect way, the interest on his share of the value of those trees. But the practice was not to calculate the market value of those trees and then allow the Kudiyan interest on his share of that value, leaving the balance of pattom to be regarded as Jenmi pattom. At every subsequent renewal the pattom of those trees which began to bear between that date and the date of the previous renewal was ascertained and after making similar reductions for *Nadavukur* the balance was added to the Jenmi pattom of the previous renewal to form the new Jenmi pattom for that renewal. The new pattom so fixed should not, under this Regulation, exceed one-fourth of the gross produce (*a*). It has, however, been held that when *Nadavukur* is allowed to the Kudiyan, *i.e.*, when his share of the value of the trees planted by him is fixed, the amount becomes a debt due to the Kudiyan payable to him in case of his eviction just then and that when interest on this sum is allowed to a tenant, the cost of improvements must be taken as kanom (arthom) according to the definition in Sec. 3, Cl. (5), and included in the Kanom amount (*b*). It has also been held that when *Nadavukur* is allowed to the Kudiyan all the trees become those of the Jenmi (*c*). The correctness of these decisions is doubtful. They

(*a*) Sec. 22

(*b*) A.S. 173 of 1075 (unreported).

(*c*) S.A. 224 of 1082 (unreported).

are against the ancient practice recognized by this section. Secondly, this Regulation does not contemplate a piecemeal valuation of the plantations in a holding; nor *any* valuation of the plantations except in cases of eviction. Thirdly, the absence of a provision in this clause similar to the one in the preceding clause that the cost of reclamation or other works of permanent improvement should be estimated and interest thereon allowed to the Kudiyan shews that the Legislature contemplated only the continuation of the old practice and not the supercession of it in the manner laid down by the rulings quoted above. The Jenmi is the owner of the holding and of everything growing thereon (*a*) even though they were planted and reared by the Kudiyan who can only claim compensation (*b*). The Kudiyan's interest is limited to the usufruct (*c*). The value of the trees need not, therefore, be estimated and the Kudiyan's share thereof made a debt due to him from the Jenmi before the Jenmi can become the owner of those trees. The Kudiyan, on the other hand, must wait till eviction before he can claim his share of the value of the trees planted by him and he can get only their value as estimated then. At that time, probably, the trees have ceased to exist or have become useless for no fault of the Kudiyan. Is a re-valution to be made then? The Kudiyan will object to any reduction and say "I did not insure against the acts of God. I took the greatest care of the trees. I am not liable for their loss or deterioration." How then are the rights of the parties to be adjusted? The Kudiyan can also legitimately complain against the Kanom amount being thus increased at each renewal and his being compelled to pay renewal fees on such additional Kanom too for all future renewals.

The reference in Sec. 3, Cl. (5) in the definition of "Kanom" that it "includes the value of improvements made by the Kudiyan and treated as Arthom or consideration" is to the amount estimated under the provisions of the preceding clause. As the interest on the capital outlay is to be deducted from the difference between the current and the old pattom, and as deductions from

(*a*) Sec. (3) cl. (1).

(*b*) Sec. 8.

(*c*) *Padmanabhan Krishnaru* v. *Velappavu Panditharu*, 18 T.L.R. 4

the Jenmi pattom are allowed only on account of the interest on the kanom amount (*a*), the capital oultay is rightly treated as Kanom.

For an instance where nothing appears to have been allowed for *Nadavukur*, see *Krishnan Kauli* v. *Mayakondan Yesuvadian* (*b*). In the absence of any agreement or evidence of the usual rate prevailing in the Proverthy, the Kudiyan's share of the cost of planting and rearing the trees will be taken to be three-fourths (*c*).

Rate of assessment of Pattom.

22. (*a*) The Pattom on paddy lands shall not exceed one-fourth of the gross produce.

(*b*) The Pattom on other lands shall, in like manner, not exceed one-fourth of the estimated average annual yield of the trees growing thereon, commuted into money at the average market rate, the average being based upon the market price of the different kinds of staple produce for 12 years preceding. If no such trees exist, the Pattom shall be taken to be equal to the Payattupattom prevailing in the Proverthy.

(*c*) The Pattom on buildings shall be one-half of the rental value fixed under the last para of the preceding section.

(*d*) The Pattom so assessed shall be subject to deduction on account of interest on the Kanom money but not on account of existing Sircar tax or customary dues and renewal fees which shall be paid by the Kudiyan out of his share of the produce.

Provided that the existing Pattom shall not be disturbed for the reason only of its being above or below the proportion fixed under this section.

(*a*) Sec. 22 Clause (*d*).

(*b*) 15 T. L. R. 19.

(*c*) S. A. 321 of 1073 (unreported).

Notes (1). *Antecedent Law.* "The usual mode of fixing *Michavaram* was by ascertaining the gross yield of the land and deducting therefrom what is generally required for seed and labour, *viz.*, a moiety of the gross yield and also the interest on the Kanom money invested by the tenant and the balance being taken as the Michavaram due to the Jenmi" (*a*). But the practice was not uniform. The division of the produce between Jenmi and Kudiyan was guided by peculiar local customs. In the case of gardens bearing trees alone were counted. Cocoanut, arecanut and jack trees were the principal trees though palmyrah and other trees yielding toddy and other valuable products were sometimes taken into account. "In the case of waste lands Payattu Pattom rate in North Travancore, and the plough-rate rent in South Travancore," (*b*) was the general rule.

(2) *Present Law.* This Regulation swept away all uncertainty due to the various local customs and fixed the maximum Jenmipattom at the uniform rate of one-fourth of the gross produce or average annual yield. And in the case of gardens without trees, the pattom is to be the Payattupattom prevailing in the Proverthy. "Gross produce" in Cl. (*a*) and "annual yield of trees" in Cl. (*b*) mean the same thing, *viz.*, gross-produce (*c*).

(3) *The Jenmi Pattom, best evidence of.* The best material from which questions as to the amount of Pattom &c., of a land can be satisfactorily determined by a Court is the Report of a Commissioner deputed to make a local enquiry (*d*). One-fourth of the gross produce of the trees which began to bear after the last renewal may be fixed as the enhanced Jenmi pattom (*e*).

(4) *Jenmi Pattom, what should be excluded in calculating.* This section as framed by the Select Committee included the produce of "vines" too being taken into calculation in estimating the gross annual yield. But the word "vines" was omitted

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(*a*) *Padmanabhan Govindan Numburipad* v. *Kanakku Chandiran Govindan*, 2 T. L. R. 23.

(*b*) Mr. Kunhiraman Nair's Memo on Land Tenures, Part I, para 90.

(*c*) S. A. 69 of 1079 (unreported).

(*d*) *Thrivikramar Thevar Potti* v. *Parvathy Parappy*, 3 T.L.R. 4.

(*e*) *Krishnan Kauli* v. *Mayakondan Yesuvadian*, 15 T.L.R. 19 and *Kotharatharoo Numburipad* v. *Kunju Pillay*, 17 T.L.R. 150.

during the discussion of the Bill in the Legislative Council. Following the intention of the Legislature, it was held that pepper vines not being "trees" the produce of it cannot be taken into calculation in assessing the Pattom (*a*). Sugar-canes too have been held not to be "trees" and, therefore the yield of the sugar-cane cultivation, should also be left out of account (*b*). *Cherupoonna* and *Maravatty* also must be excluded in calculating the Jenmi pattom as they cannot be classed under the head of trees which yield produce (*c*).

(5) *Cherikkals.* Cherikkal lands come under the second part of Cl. (*b*), *i.e.*, of garden lands without trees (*b*).

(6) The proviso to this section is very important. As settled by the Select Committee it only laid down that the existing pattom was not be to disburbed for the simple reason that that pattom was above the proportion fixed by this section. The Kudiyans felt this as a grievance and wanted all the Kanapattoms to be reduced immediately to the proportion fixed by this section. Such a procedure was extremely unfair to the Jenmis and the proposal was not accepted, but the proviso was altered into the present form. In *Sankari Pillay Thangachi* v. *Padmanabharu* (*d*), though the Jenmi did not claim an enhancement of Michavaram but claimed only Ettartham, it was found that the assessment of Pattom in the mode indicated by this section, *i.e.*, "by taking one-fourth of estimated average annual yield of the trees as pattom payable to the Jenmi, would leave but little, if anything, to the Jenmi after deducting the interest on the Kanom amount." But in that case the Court refused to disturb the Pattom fixed in the document. The learned Judges held that "the object of the proviso is evidently to prevent any possible injustice that may accrue by the sudden adoption of the one-fourth rate when the rate prevailing at the time of the introduction of the Regulation was a varying one from one-half to one-third" * *. Conversely in the absence of

(*a*) S. A. 260 of 1073 (unreported).

(*b*) *Kotharatharoo Numburipad* v. *Kunju Pillay*, 17 T. L. R. 150.

(*c*) S. A. 224 of 1082 (unreported).

(*d*) 18 T. L. R. 149.

any of the grounds mentioned in section 21, the Michavaram will not be enhanced for the simple reason that the pattom fixed in the deed is smaller than the pattom calculated according to this section.

(7) *Sirkar Tax.* The Sirkar tax was customarily and is by cl. (*d*) of this section made payable by the Kudiyan out of his share of the produce. An increase in the Sirkar tax is not a ground for reduction of Michavaram during the currency of the existing lease, but the Courts as Courts of equity may, at the times of renewal, refuse an enhancement of Michavaram in consideration of the fact of the increase of tax (*a*).

Amount of Ettartham leviable on renewal of Kanapattom.

23. The amount of additional Kanom or Ettartham leviable by the Jenmi at the time of renewal of Kanapattom, when such is leviable under the provisions of this Regulation, shall not, without the consent of the Kudiyan, exceed six times the amount of the enhanced Michavarom which would have been payable by the Kudiyan, had the Jenmi claimed such enhancement under the provisions of sections 20 and 21.

Notes. (1). *Scope of section.* This section applies only to the Jenmis who were hitherto levying Ettartham instead of enhancing the Michavaram. Such Jenmis are by Sec. 14 permitted to continue the practice. It is only in cases where a Jenmi may, under sections 20 and 21, claim an enhancement of pattom that he can claim *Ettariham.* Where, therefore, there is no evidence to show that the land under cultivation is in excess of the area on which pattom was originally fixed or that the rate of current pattom is below the prevailing rate or that the productive powers of the land have increased, no *Ettartham* will be awarded (*b*).

(*a*). *Krishnan Parameswaran* v. *Swaran Narayanan*, 12. T.L. R. 107 (F.B.) followed in S.A. 213 of 1076 and S. A. 20 of 1082 (unreported),

(*b*) S. A. 321 and A. S. 189 of 1074 (unreported).

(2) *Amount of Ettartham claimable.* The amount of Ettartham claimable by a Jenmi at the time of renewal is fixed by the section at six times the enhanced Michavaram which would be payable under sections 20 and 21. This amount is less than the value of the increase in the Michavaram capitalized at 12 p. c. and, of course, far less than the value of the same capitalized at the rate at which interest on the Kanom is allowed to the Kudiyan. The Jenmi being allowed to claim only a portion of the capitalized Michavaram was, I think, intentional. If the Jenmi had been awarded an enhancment of pattom only, the Kudiyan can, at a subsequent renewal, obtain a reduction of the same for good reasons (*a*). But if the Jenmi be given Ettartham equal to the capitalized value of the increase in the Michavaram, it would be necessary when the Kudiyan obtains a reduction of pattom either to compel the Jenmi to pay back to the Kudiyan a portion of the Kanom or to allow the Kudiyan a higher rate of interest on the Kanom. It has been held that a claim for the reduction of the Kanom amount has not hitherto been recognised by the Courts (*b*). The Kudiyan cannot claim a rate of interest higher than the one prevailing in the Proverthy where the holding is situated (*c*). The difficulty of doing justice in such cases, probably influenced the Legislature in fixing the amount of Ettartham claimable at a renewal at the low figure given in this Section.

Kudiyan may claim reduction of Pattom in certain cases.

24. A Kudiyan may, at the time of renewal, claim reduction of Pattom on the grounds,

(*a*) that the area of his holding has been diminished, not by his neglect, but by the action of sea, river or lake, or like causes,

(*b*) that the soil of the holding has, without the fault or neglect of the Kudiyan, become permanently deteriorated,

(c) that in the case of gardens there has been a

(*a*). Sec. 24.

(*b*). S. A. 327 and 333 of 1073 (unreported).

(*c*). Sec. 14.

fall in the average local prices of the produce of the trees in the holding during the currency of the current Kanapattom,

(*d*) that the number of assessable trees in the holding has substantially diminished by causes not preventible by the Kudiyan,

(*e*) that the rate of the current Pattom of his holding is above the prevailing rate for similar lands in the village in which it is situated.

Notes. Corresponding to the right of the Jenmi to claim an enhancement of pattom at the time of renewal, the Kudiyan has the right at such times to claim a reduction of pattom. The right was recognised in ancient days. The grounds for the reduction of pattom are the converse of those which entitled the Jenmi to an enhancement. An abatement of pattom cannot be claimed at the time of renewal on account of the carrying out of protective works, for it is not one of the grounds specified in this section. He may claim compensation for "improvements" which includes protective works against floods. He may also claim a deduction from the pattom of the interest on the money spent on the protective works (*a*).

Ground (*a*). The Kudiyan is bound to take care of the property and to protect it from the action of the sea, river, &c. If he does so the protective works will be "improvements" under Sec. 3. If he fails to do so and it is not clear that the diminution could not have been prevented by him, a slight diminution in the area is no ground for reduction of pattom (*b*).

Ground (*e*) "village" in this clause and "Elai or Muri" in Sec. 21 (*a*) (2) mean the same.

Courts not to decree unfair enhancement or abatement.

25. Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement or abatement which is, under the circumstances of the case, unfair or inequitable.

(*a*) S. A. 134 and 152 of 1080 (unreported).
(*b*) *Sankari Pillay Thangachi* v. *Padmanabharu*, 18. T. L. R. 149.

Notes. This section is intended to prevent unfair enhancement or abatement of pattom.

On transfer of Jenmom right Kudiyan entitled to have customary dues commuted into fixed annual payment.

26. In the case of a transfer of Jenmom right it shall be competent to the Kudiyan to call upon the transferee to commute customary dues into fixed annual payment. The transferee shall comply with such demand. If they disagree as to the rate of commutation, the Court shall decide what shall be the fair and equitable rate.

Notes. Section 4 validates transfers of the Jenmom right. On a transfer of the Jenmom right, the Kudiyan can, under this section, call upon the transferee to commute the customary dues into fixed annual payment. In so commuting, the question whether all the various fees customarily levied by the original Jenmi should be taken into calculation or only such of them as have no relation to religious domestic ceremonies in the Brahmin Jenmis' family, cannot be said to have been finally settled. Why should the religion of the transferee deprive him of any of the customary dues levied by the original Jenmi? Aravakasoms (or Arukalcha or Aradiyanthram fees) are offerings made by the Kudiyans on occasions of religious domestic ceremonies in the Brahmin Jenmi's family. It was held (*a*) by a Division Bench of the High Court that on a transfer of the Jenmom right to a Christian, the transferee "cannot treat the right to levy fees on the occasions when Hindu religious ceremonies are performed as conferring a right to levy the same fees on the occasions when Christian religious ceremonies are performed." The learned Chief Justice went further and felt inclined to hold that "it can be claimed only if the lands are held by the Brahmin Hindu descendant in the line of primogeniture of a Numboodiri Brahmin," and that this section "which refers to commutation of customary dues on transfer can, therefore, relate in the case of non-Hindu transferees only to Onakalcha (Onam having become a social festival that has been adopted even by native Christians), *Alakkada*,

(*a*) *Kuncheria Mathan* v. *Ramakrishna Iyen Ramasubba Iyen*, 22. T.L. R. 131.

etc., which have nothing to do with Hindu Religion." The Court relied upon the decision in A.S. 280 of 72 where their Honours K. Krishnasway Rao, C.J., and Kunhiraman Nair, J., held that "the status and circumstances of the plaintiff's family make the continuance of the old system of payment on the occasion of the occurrence of the ceremonies connected with the eldest member or the eldest son of the eldest member in the Brahmin Jenmi's household unsuitable to the plaintiff and unfair to the tenants who must be presumed to have contracted to pay these dues to the Numbudri Jenmi in whose family only the eldest son contracts a marriage." But the purchaser of the Jenmom right in that case—a Pandi Sudra, was not deprived of Aravakasoms entirely but was held entitled to commute it at a low figure. The question under discussion had arisen before this Regulation. In *Kottayil Varki Varidu* v. *Elayathu Sankaran Krishnan* (a) the purchaser of the Jenmom right was an Elayathu. The Court held the purchaser was "in the same position as the original Jenmi." "The purchaser—whatever his caste or creed —succeeds to all the right, title and interest" of the former Jenmi. "The sale passes to him absolutely the whole interest" of the original owner. The purchaser may recover the annual Michavaram and the renewal fees and also enforce the forfeiture clause. With respect to customary dues Mr. Kunhiraman Nair, J., held (b) that "the occasional cesses such as Aradiyanthram payable on the occasion of domestic ceremonies in the Jenmi's household and *Thirumul Kalcha* payable on the day of the anniversary of the birth of a Jenmi may not be, strictly speaking, an appropriate cess to be levied by non-Brahmins generally, though plaintiff, an Elayathu who is nearly a Brahmin in customs and manners, may have to celebrate the same ceremonies as a Brahmin, *but their claim to such cesses cannot be legally resisted.* * * * The levy of such cesses was one of the expedients resorted to for taking out of the tenant a portion of the profit derived by him from the cultivation of the land and ample allowance or deduction of the net produce is made to the tenant at the time of the renewal or re-adjustment of the terms of the Kanom lease. The liability to the payment of fees and cesses is an element in

(a) 8 T.L.R. 6. F.B.

(b) See pages 17 and 18.

the determination of the net rent or Michavarom and a non-Brahmin who becomes a Jenmi by purchase may, at the time of periodical renewals, adjust the terms of the lease as to the payment of such cesses." Messrs. Krishnaswamy Rao, C. J., and Sitaramier, J., held that "the purchaser is entitled by virtue of his purchase to all the rents (Michavarom), renewal fees (Adukkavathoo, Olappanam, &c.) and the customary dues (Aravakasoms) from the tenant as the late Jenmi was—." (*a*) The fact that there would be no occasion for the demand of *Aravakasom* if the purchaser is not a Brahmin did not escape notice. Their Honours held that "if the purchaser is a non-Brahmin, say a Christian he will have no occasion for the demand of Aravakasoms, *i.e.*, he will not have to perform the ceremonies to meet the expenses of which these Aravakasoms are required to be paid by the tenant. But we are not prepared to say—that the purchaser should, on that account, give up these Avakasoms. He is, as a matter of law, entitled to them. They are landlord's dues and had been paid to the previous Jenmi. The terms of the lease were settled with reference to these Avakasoms along with their dues * * * ." (*b*) In this case too the Avakasoms were consolidated into one item.

Thus, if the Avakasoms are landlord's dues, the religion of the transferee of the Jenmom right should be no bar to his claiming them. In *Kuncheria Mathan* v. *Ramakrishna Iyen Rama Subba Iyen* (*c*)., Mr. Padmanabha Iyer, J., finds that the ceremonies on occasions of which the Avakasoms are paid are all religious ceremonies peculiar to the Hindus and cannot take place in a Christian family. The learned Chief Justice holds that these "Avakasoms strictly speaking, were intended more as offerings made to the Brahmin Numbudri Jenmis who were like feudal overlords * * * by their tenants who were in the position of feudal vassals and these exactions were not merely rents in the ordinary sense" and that "fees payable to the ancient Brahmin overlords should not be continued when the lands pass to others. The origin of these fees is not disputed. But that these fees were and are a charge on the land, and that the terms of the

(*a*) See page 19 of 8 T.L.R. 6 F.B.
(*b*) See pages 20 and 21 of do.
(*c*) 22. T.L.R. 131.

lease were settled with reference to these Avakasoms and that whatever be the origin of these fees, whether "merely rents in the ordinary sense" or not, they have come to be regarded as landlord's dues or one of the expedients "for taking out of the tenant a portion of the profit derived by him." do not appear to have been considered by (or the case in 8. T. L. R. 6. F. B. brought to the notice of) the learned Judges who decided *Kuncheria Mathan* v. *Ramakrishna Iyen Ramasubba Iyen* (a). The unsuitability of these fees to non-Hindus appears to be the sole ground of that decision.

There is another point also to be considered in this connection. It has been said before (b) that the sale of the Jenmom right was not giving the Jenmi an adequate price owing to the uncertainty of the validity of the transfer and the burden imposed by the Sirkar on account of such transfer. Sec. 4 has removed the uncertainty of title, but the burden of the increased tax being laid upon the transferee, the Jenmom lands are still heavily handicapped. If the transfer of the Jenmom right were to deprive the purchaser of any dues collected by the original Jenmi for the sole reason of the religion of the purchaser, it needs no great effort to see that these lands will be placed at a greater disadvantage than before. Whether this indirect restraint on alienation is conducive to the prosperity of the landowners also deserves to be considered.

PART B. DEPOSIT OF RENT AND CUSTOMARY DUES IN COURT.

Kudiyan may apply to Munsiff's Court for leave to deposit Michavarom on Jenmi's failure to accept tender.

27. If any Kudiyan tenders to the Jenmi full payment of Michavarom or renewal fees or other dues as they fall due and if the Jenmi is not ready or willing to accept the tender and grant a receipt forthwith, or if the Kudiyan entertain a *bona fide* doubt as to the party entitled to receive the Michavarom and other dues;

(a). 22. T.L.R. 131.

(b). See the notes under Sec. 4 page 32.

the Kudiyan may apply to the Munsiff's Court, within whose jurisdiction the holding is situated, for leave to deposit such amount in Court to the credit of the Jenmi.

Notes. (1) *Antecedent Law.* As the Kudiyan forfeited the holding if he defaulted to pay rent, &c., for 12 years in spite of demand and as the Kudiyan was liable to be outwitted by an astute Jenmi, the Royal Proclamation of 1042 enabled the Kudiyan to pay the rent and other fees into Court, if the Jenmi refused to receive the same. Besides being permitted to deposit the rent, &c., in Court, the Kudiyan enjoyed, under the Proclamation, the additional right of compelling the Jenmi by a regular suit to accept the Michavaram (*a*).

(2). *Present Law.* This Regulation does not expressly or by necessary implication abolish the right of the Kudiyan to compel the Jenmi by a regular suit to accept the Michavaram, nor is that right inconsistent with the provisions of this Regulation. The Kudiyan, therefore, may exercise that right even now (*b*).

(3). *Scope of the Section.* This section is only permissive and it is not obligatory on the Kudiyan to make the deposit. His right to do so accrues only (i) when the Jenmi is not ready or willing to accept the tender of the full amount of the Michavaram, &c., and grant a receipt, or (ii) when the Kudiyan entertains a *bona fide* doubt as to the party entitled to receive the Michavaram, &c., except as the means of preventing forfeiture, the importance of this Part will be evident from Sec. 17 which lays down that if the several payments due to the Jenmi are not made on the due dates, interest accrues thereon. But payment into Court is not necessary to prevent the running of interest. Under section 17 since the interest accrues only on the "arrears" it is enough, to prevent the running of interest, that the rent, &c., is not in "arrear." A valid tender will prevent the rent being in "arrear" and as a consequence will prevent interest accruing (*c*).

(*a*). *Meethia Kadija Umma* v. *Nambiathan Nambiathan Bhattathiri*, 12 T. L. R. 69.

(*b*). *Krishnan Narayanan* v. *Krishnan Madhavan*, 24 T.L.R. 76.

(c). I.L.R. 34 Cal. 305 and 35 Cal. 34.

A *bona fide* doubt as to the party entitled to receive Michavaram, &c., will not prevent the running of interest, for, a debtor must seek out his creditor and pay. In such cases, it would be well if the Kudiyan deposits the amount in Court. The amount deposited should be the full amount due. Interest will run in spite of a partial deposit (*a*).

Contents of the application.

28. The applicaton shall specify, as far as possible,

(*a*) the name of the Jenmi and his description when known, and, in case of doubt, the name and description of all the rival claimants,

(*b*) the local name, description and extent of the holding.

(*c*) the particulars of the tenure on which the holding is held by the Kudiyan,

(*d*) the full amount of Michavarom or customary dues due up-to-date, and

(*e*) the circumstances under which the application is made,

and shall be verified in the manner prescribed by the Code of Civil Procedure for the verification of plaints.

Michavarom and other dues due up to date of application to be paid into Court.

29. The amount of Michavarom or other dues specified in clause (*d*) of section 28 shall be paid into Court at the time of the application, the price of grain or other commodities payable as Michavarom or dues being commuted into money at market rates.

(*a*). A.S. 133 and 139 of 1080 (unreported).

Munsiff to issue notice to Jenmi.

30. The Munsiff shall, upon such payment as aforesaid, issue a notice to the Jenmi or other persons named in the application mentioned in section 28, calling upon him or them to show cause why the payment should not be accepted and a receipt granted to the Kudiyan.

Further procedure.

31. (1) On the day fixed for the appearance of the parties or on any other day to which the hearing of the application may be adjourned, the Munsiff shall hear the objections, if any, of the Jenmi or other parties claiming the right to receive the Michavarom and dues, and on being satisfied that the full amount due up to date has been paid into Court by the Kudiyan and that the Kudiyan is entitled to make the application, shall grant a receipt in the form prescribed by section 19.

(2) If the amount paid into Court be less than what is justly due to the Jenmi at the date of the application, the Munsiff shall reject the application and return the deposit unless the Kudiyan offers to make good, and does make good, the deficiency within six weeks from the date of the order by the Munsiff to make good the same.

(3) In all cases where a receipt is granted by the Court, the deposit shall be paid over to the Jenmi or other party appearing to be entitled to the deposit. In cases of dispute as to the person entitled to receive the deposit, the Munsiff may take security from the person in whose favour he adjudges in the summary investigation before making the payment.

(4) Nothing in this section shall affect the right of any party to contest by a regular suit the decision passed under clause (1) or to recover the amount paid from the party receiving the deposit under the summary order of the Court.

(5) A receipt granted by a Court under clause (1) shall operate as a full acquittance for the amount paid into Court and shall have the same force and effect as a receipt granted by the Jenmi himself.

Applications under part B to be exempt from Court fees.

32. Every application made under this part B shall be exempt from payment of Court fees.

PART C. OF THE JURISDICTION OF COURTS OVER PETTY CLAIMS FOR MICHAVAROM AND CUSTOMARY DUES.

Summary jurisdiction of Courts.

33. Claims by Jenmis for recovery of arrears of Michavarom, renewal fees or customary dues shall, when the amount or value of such claim does not exceed Rs.100, be taken cognizance of and disposed of summarily by the Courts hereinafter mentioned.

(1) District Munsiffs shall have jurisdiction in respect of all such claims where the amount or value of the claim does not exceed Rs.30.

(2) Zillah Judges shall have similar jurisdiction where the amount or value of the claim exceeds Rs. 30 but does not exceed Rs.100.

Notes. It will be remembered that summary suits under this Regulation will be maintainable under Sec. 16 for the recovery only of Michavaram, customary dues, &c., as are specified

in the Kanapattom or its counterpart duly registered. *Thiruppuvarams* and *Jenmi Bhogams* charged on pandaravagai lands and due to Jenmis cannot, therefore, be summarily recovered under this Regulation. (*a*).

"Customary dues" though not included in Sec. 13 may be summarily recovered under this section. For the probable reasons of the omission in Section 13, see the notes thereunder.

Where the amount of the claim is more than Rs. 30 the Jenmi has the right to institute a small cause suit in the District Court. Summary suits under this Regulation cannot be tried as regular suits subject to the provisions of appeal to the District Court (*b*). Since Section 13 gives the Jenmi a charge on the holding for Michavaram and renewal fees and the charge attaches to the holding as soon as the arrears accrue, and as under this section all such claims may be disposed of summarily, a suit for declaring that the renewal fees due to the Jenmi constitute a lien on the holding may be taken cognizance of summarily under this section (*c*). The decree passed in the Small Cause suits under this Regulation will be against the holding also. The general nature of Small Cause Jurisdiction is that in such suits there can be no decree against immoveable property. But in suits under this Regulation a statutory remedy is provided by special Legislation as against the land for arrears of Michavaram, &c., (*d*).

The provisions of this chapter are new. At the time the Royal Proclamation was issued, though it was found expedient to protect the interests of the Kudiyan and to give all facilities for avoiding forfeiture, any speedy method of realising the rent, &c., from the Kudiyans was not even suggested. The Government of the time was fully aware of the necessity of providing such means. (*e*). But nothing was done and it was left to this Regulation to supply the omission. Section 33 enacts what suits may be tried as summary suits under this Regulation. It also fixes the pecuniary jurisdiction of the District Judges and Munsiffs.

(*a*) *Madhavaru Govindan Numbury* v. *Narayanan Narayanan*, 22 T.L.R. 176.

(*b*). S.A. 203 of 1083 (unreported).

(*c*). 14 T.L.R. App. 39.

(*d*). *Raman Ayappan* v. *Chothi Thirunal*, 17 T.L.R. 66.

(*e*). See Introduction para 52.

Procedure for trial of non-appealable cases to be followed in summary suits under this Regulation.

34. Except as otherwise provided by this Regulation, the procedure prescribed by any law for the time being in force for the trial of non-appealable cases shall be the procedure to be followed by the District Munsiffs and Zillah Judges in all suits and proceedings summarily cognizable by them under this Regulation.

Notes. This Section lays down the procedure to be followed in the trial of suits under this Regulation. The procedure prescribed by any law for the time being in force for the trial of non-appealable cases is made applicable to all summary suits and proceedings under this Regulation.

Where cause of action arises.

35. The cause of action for recovery of such claims shall be deemed to have arisen at the place where the holding, in respect of which the claim accrued, is situated and the suit shall, subject to the provisions of section 33, clauses 1 and 2, be preferred to the Court within the limits of whose territorial jurisdiction the cause of action shall have arisen as aforesaid.

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Notes. This Section enacts that the cause of action for the recovery of claims under this Regulation shall be deemed to have arisen where the holding is situated, and, subject to the pecuniary limits prescribed by Section 33, the suit shall be instituted in the Court within whose local jurisdiction the holding is situated.

Plaint when exempt from Court fees.

36. The plaint in such suits shall be exempt from payment of Court fees, if the claim be for recovery of arrears which accrued due within 12 months next preceding its institution; if otherwise, the regular

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Court fee which would have been levied. had the claim been instituted as a regular suit in a competent Court shall be levied on the plaint.

Notes. This Section grants a favour to the diligent Jenmi. No Court fee is payable if the claim is for the recovery of the arrears which accrued due within the 12 months next preceding. If otherwise, the ordinary Court fee is payable.

Agent of Jenmi.

37. Any agent or Vicharippukaren of a Jenmi empowered in this behalf by a written authority under the hand of the Jenmi shall, for the purposes of summary suit or application under this Regulation, be deemed to be a recognised agent of the Jenmi within the meaning of the Code of Civil Procedure, notwithstanding that the Jenmi may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending or in which the application is made.

Notes. By this section, the Legislature shews respect for the feelings of many a Jenmi. The higher order of Numboodri Brahmins are unwilling to appear in person in Courts. Their estates lying in the several Proverthies are managed by their agents or Vicharippukars. The Jenmis generally have no personal knowledge of the details of such management and their numerous suits for Michavaram, &c., are conducted by their agents. But under the Code of Civil Procedure now in force a Jenmi, if living within the Jurisdiction of the Court, must either appear in person or employ a Vakil to appear and conduct the suit. This was felt to be a great hardship and source of expense by the Jenmis and they are, therefore, permitted to appear and conduct their suits or applications under this Regulation through their agents or Vicharippukars. This provision is copied from the Bengal Tenancy Act, Section 145, by which the Zemindars in Bengal have been granted similar concessions.

Power of Court to decide question of title to immoveable property or status.

38. If in the decision of a suit cognizable summarily by a Munsiff or a Zillah Judge under Section 33, it becomes necessary to decide incidentally any matter in dispute between the parties to the suit, concerning title to immoveable property or the status of either of them or of those under whom they claim, which, if it had been the immediate subject matter of the claim, would not be cognizable by the Munsiff or the Zillah Judge under the procedure applicable to non-appealable cases, it shall be competent to the District Munsiff or the Zillah Judge, as the case may be, to decide such question of title to immovable property or status, so far as it may be necessary to do for the determination of the suit; but such decision shall not be conclusive evidence of such title or status in any other action between the same parties or their representatives

Notes. This Section is intended to guard against the dismissal on technical grounds of a Jenmi's suit brought under Sec. 33. On the contentions of the Kudiyan-defendant it might become necessary in a summary suit under this chapter to adjudicate upon the Jenmi's title to the land itself. This section enables the Court to do so but at the same time provides that such decision shall not be regarded as *res judicata* between the parties. Similar provisions are found in the Madras Village Munsiff's Act (Act I of 1889), Sec 19.

Procedure where Kudiyan admits the money due but pleads title of third person.

39. (1) When a Kudiyan-Defendant admits that money is due from him on account of Michavarom or renewal fees or customary dues but pleads that it is due not to the Plaintiff, but to a third person, the Court shall, except for special

reasons to be recorded in writing, refuse to take cognizance of the plea, unless the Defendant pays into Court the amount so admitted to be due.

(2) When such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months of the notice institutes a regular suit against the Plaintiff and therein obtains an order restraining payment of the money, it shall be paid over to the Plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from the Plaintiff the money paid to him under clause (3) of this section.

Notes. This Section was necessitated to check frivolous denials of the title of the Jenmis.

Decision of Munsiffs and Zilla Judges to be final.

40. The decision of Munsiffs and Zillah Judges passed in summary suits under this Part shall be final, but shall be subject to revision by the High Court in the manner provided for by Section 568 of the Civil Procedure Regulation (II of 1065).

Provided that no judgment, decree or order, in supersession of the decision or order of the subordinate Court, shall be passed by the High Court without giving the parties an opportunity of stating their case either in person or by Vakils.

Power of High Court to make rules:

41. The High Court may, from time to time, make rules consistent with this Regulation for regulating the practice and procedure of Courts acting under

this Regulation. The rules so made shall be published in the Gazette.

Saving of Kanapattoms executed since 25th Karkadakom 1042.

42. Notwithstanding anything contained in the foregoing, the provisions of this Regulation shall not apply to any Kanapattoms executed since the twenty-fifth day of Karkadakom 1042, which expressly provide for redemption.

Notes. (1) *Object.* This Section and Section 43 should be read along with Section 5. This Section is intended to preserve rights declared or established or acquired before 1-1-74 by a decree of Court or by the award of arbitrators or by the finding of a judicial tribunal binding on the parties and so on, and not rights which were taken away by Sec. 5 (*a*).

(2) *Provision for redemption.* The Royal Proclamation of 25th Karkadagom 1042 made all Kanapattoms executed before or after its date irredeemable, but it also provided that Kanapattoms executed after that date may be redeemed if the Jenmi took care to provide expressly for redemption (*b*). When it has been so expressly provided for, Section 5 of this Regulation does not give that Kudiyan a right of permanent occupancy (*c*). The burden of proving that the tenancy was redeemable was on the Jenmi (*d*). The clause "if any of the payments mentioned herein be not made" occurring in a Kanapattom deed is not sufficient, under cl. (8) of the Proclamation, to give the Jenmi the right to redeem (*e*). But a mortgage-deed executed by a Malayali Brahmin Jenmi in 1057 reserving an annual Michavaram but under which no renewal fees or customary dues were paid is not a Kanapattom but is redeemable (*f*).

(*a*). *Narayani Pappi* v. *Krishnan Karthavu*, 23 T.L.R. 162.

(*b*). *See* clause 8 of the Proclamation.

(*c*). *Mani Ouseph* v. *Narayanan Krishnan Numbury*, I.U.T.D., Vol. I, page 7.

(*d*) S.A. 312 of 1075 (unreported).

(*e*) S.A. 343 of 1073 (unreported).

(*f*). *Sivakami Lekshmi Ammal* v. *Narayana Iyen Janardana Iyen*, I.U T.D. Vol. I, page 73.

Terminable nature of tenancy to be determined from terms of contract.

43. In contracts relating to Jenmom lands entered into for the first time after this Regulation comes into force, the question whether the tenancy is terminable or otherwise shall be determined according to the intention of the parties as gathered from the terms of the contract.

Notes. It being against public policy to restrain freedom of contract, this Regulation does not prevent the Jenmis from entering into any contract with others in respect of their lands. All such contracts will not be interpreted to be Kanapattoms.

Saving of rights of Kudiyan of more than fifty years' standing.

44. Notwithstanding anything contained in the foregoing, the provisions of this Regulation shall not apply to any Kudiyan, who or whose predecessor in interest, has held his holding for more than fifty years preceding the date of this Regulation, without paying Michavarom and other dues or without taking any renewal within the said period of fifty years.

And of established rights.

The provisions of this Regulation shall not apply to any right declared, established or already acquired by Jenmis or Kudiyans at the date this Regulation comes into force.

Explanation.—If any time for redemption has been specially provided for, the fifty years shall be calculated from the date on which the stipulated time expires.

Notes. (1) *Object*. It has been laid down in *Sankaran Numboory Chitran Adithiri* v. *Raman Bhagavathy* (a) that if there

(a). 16. T.L.R. 168.

be a fair presumption of an original Kanapattom lease from the Jenmi and a derivative title of the present possess or under that Kanapattom lease be proved, the occupant may be required to prove the terms of the tenancy; and in *Parameswaran Venkitachalam Iyen* v. *Krishnan Vasudevan Numboory* (*a*) it has been held that so long as the relation of landlord and tenant exists and unless the Kudiyan holds for the statutory period after some overt act of denial of the Jenmi's title, the Jenmi's right to enforce a renewal is not lost. There might be cases in which the presumption laid down by the former ruling may arise but the Kudiyan may not be able to prove the adverse possession as laid down in (*a*) case. All that the Kudiyan could prove might be that, he did not pay Michavaram or take a renewal or otherwise acknowledge the Jenmi's title for a very long time. But this will not have been sufficient to defeat the Jenmi's right to enforce a renewal (*a*). This section has been enacted to save the Kudiyan from being harassed by antequated claims and to prevent the lazy or indolent Jenmis speculating in litigation.

(2). To satisfy the requirements of this section it must be shewn that (1) the Kudiyan or his predecessors in interest were in possession for more than 50 *years preceding the date of this Regulation*, and (2) during that time, the Kudiyan or his predecessors in interest did not pay Michavaram or other dues or take a renewal (*b*). The law laid down in *Sankaran Kochoonni* v. *Ouseph Devasya* (*c*) applies to this section also (*d*). For the principle laid down by (*c*) case, see the notes under section 5 page 37. The Kudiyan must expressly plead this defence and, if the Jenmi denies it, prove the same. If the period during which the Kudiyan was in possession without paying Michavaram, &c., was, on the date of this Regulation, less than 50 years he cannot plead this section as a defence, even though 50 years had so elapsed before the date of the suit by the the Jenmi. In this respect the section is unhappily worded. It should be so amended as to apply to all Kudiyans who hold possession for

(*a*) 16. T.L.R. 128.
(*b*) A.S. 127, 279 and 320 of 1076; A. S. 151 of 1081 (unreported).
(*c*) 16 T. L. R. 163 F. B.
(*d*) S. A. 350 of 1078 (unreported).

fifty years without paying Michavaram or other dues or taking renewal.

This section came into force only on the 1st of Chingom 1074 while the Regulation came into force on the 1st day of Makaram 1072. Thus the benefit intended to be conferred by this Section was held in abeyance for one year and seven months during which period the Jenmis were allowed to sue for renewals of old Kanapattoms.

APPENDIX A.

ROYAL PROCLAMATION.

ISSUED under date the 8th August 1867, corresponding with the 25th Karkatagom 1042, for defining the relations between Jenmies and Tenants.

Whereas, in reference to communications dated respectively the 25th Vrichigom 1005 and 14th Tulam, 1007, issued to the Appeal Court under order of the then Maha Rajah, on petitions addressed to the palace by jenmies and tenants on the subject of their reciprocal relations, it has been found expedient to reaffirm and render clear the sentiments expressed in those communications, and to give them effect in a way equitable to both parties, it is hereby notified

1. While tenants hold lands of jenmies for a consideration under such tenures as Kanapattom, Otti, Marayapattom, Oolavoopattom, Kodalikani, &c., and so long as they pay the stipulated rent and other customary dues, they shall not be liable to action for ouster by the jenmies, nor shall the Courts give judgment in favour of such action.

2. The jenmy shall be at liberty to exercise, according to the rules and usage apppertaining thereto, the right of re-adjusting the rent at the renewal of the lease, where such re-adjustment is allowed by custom.

3. The jenmy may sue the tenant for the recovery of rent and other dues with interest thereon, where such dues have fallen into arrears. The jenmy may seek recovery of land also, where, notwithstanding express demand, the tenant has withheld payment of the rent due for a whole period of twelve years. In cases of such suits the Courts may award payment of rent and other dues: and where it is proved that payment of rent for a whole period of twelve years has been so withheld by the tenant, in such case alone the Courts shall be competent to order restoration of land also, such restoration being subject to payment of

compensation for improvements, &c., which may be due to the tenant according to local usage.

4. Where the jenmy refuses to receive the rent, renewal fees, &c., the tenant shall be at liberty to deposit the same in the proper Munsiff Court with a written Declaration or Variola, in detail setting forth the jenmy's refusal. Where rents, &c., are due in kind, the payment to be deposited shall be the price thereof calculated at the Niruk or market rate. Payments hitherto justly due to the jenmy shall be deposited, as above, in one sum, and in regard to future rent, &c., they may be deposited as they fall due at the end of each Malabar year.

5. The Variola accompanying the deposit shall be filed in the Munsiff's Court free of Institution fee; and a notice shall be issued to the jenmy requiring him to receive the payment deposited, and grant an acquittance to the tenant.

6. If the jenmy fail to appear, or, appearing, refuse to receive the amount deposited by the tenant, the Munsiff shall pass judgment recording the fact of refusal by the Jenmy. The said judgment shall also contain statements in reference to the particular items of dues deposited, the property in respect to which the rents, &c., were due, the periods for which they were stated to be due, and so forth.

7. The judgment so passed shall be a bar to any action by the jenmy for ejecting the tenant on the ground of non-payment of the rent, &c., to which such judgment refers.

8. Where, in future, the Jenmy grants leases on receipt of a consideration, if he should desire to secure the right of revocation, in respect to any lease so granted, he shall clearly express the same in the lease-deed, to the following effect:—It is hereby declared that any time after such a day, of such a month, of such a year, the jenmy shall have the right to redeem the land (forming the subject of the lease) from the tenant and the tenants shall in no way demur to the exercise of such right. And the jenmy shall be at liberty to seek ejection of the tenant holding such lease, and the Courts may order ejection in accordance with the terms of the leases.

APPENDIX B.

The Bill, together with Objects and Reasons, introduced into the Legislative Council.

REGULATION OF 1065.

A Regulation to define clearly the relative rights of Jenmies and Tenants and to make provision for the speedy realisatian of Michavarom and other proprietary dues from tenants.

Whereas it is expedient, for the better carrying out of the intention of the Royal Proclamation of the 25th Carkadagom 1042, to define clearly the relative rights of Jenmies (Landlords) and Kudiyans (Kanappattom Tenants) in Travancore, to make further provision for the speedy realisation of Michavarom (Residual Rents) and other customary proprietary dues, and to invest the District Munsiffs and Zillah Judges with summary jurisdiction in petty claims for Michavarom (Residual Rents) and other dues—

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Regulation may be called the Travancore Jenmy (Landlord) and Kudiyan (Tenant) Regulation of 106.

(2) It shall come into force throughout Travancore on

2. Nothing in this Regulation shall affect any custom or customary right not inconsistent with or not expressly or by necessary implication modified or abolished by its provisions.

Illustration.—A usage under which a Jenmy mortgagor is not entitled to resume or redeem a paddy land except at the end of the agricultural year, that is, before the commencement of the month of Medom in each year, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by the provisions of this Regulation. That usage, accordingly, wherever it may exist, will not be affected by this Regulation.

3. The following definitions and rules shall apply in the construction of this Regulation unless there is something repugnant in the subject or context:

(1) "Jenmom land" means—

(*a*) Land recorded in the ayacut accounts or Land Register of this State as "Brahmaswom" and "Devaswom";

(*b*) Revenue-free land comprised in and forming part of Adihikaroms or Desoms administered by representatives of Idavakas or Swaroopams (petty chiefships) or of pagodas and recorded in the Ayacut or Land Register of this State as "Adhikara Olivu" and "Desa Olivu";

(*c*) Other lands owned in fee simple (Jenmom) by Malabar Brahmins or pagodas or representatives of Idavakas or Swaroopams (petty chiefships) whether registered in the ayacut accounts or not.

Explanation. Lands owned in fee simple (Jenmom) by Madambimars, Karthavoos, Kymals, Kovil Adikarikals and Thampans are not within the meaning of the clause.

(2) "Jenmy" means a person in whom the proprietary right over Jenmom lands is vested whether by hereditary descent, gift, or purchase, and whether in trust for others or for his own benefit, and includes, in the case of Devaswoms or Pagodas owing Jenmom lands, the managing Trustee or Trustees of the institution.

(3) "Kudiyan" means a person who holds "Jenmom land" immediately under a Jenmy on tenures comprised under the generic name of "Kanapattom."

(4) "Kanapattom" includes every transfer of Jenmom land made or renewed by the Jenmy in consideration of a fee or premium under the denomination of Adukuvathu, Sakshi or Avakasom, paid at the time of grant or understood to be payable at the time of renewal of the document, over and above the sum of money or paddy (hereinafter called Kanom) advanced or lent to the Jenmy.

Explanation I. A provision in a Verumpattum or simple lease for payment of a sum annually as Adukuvathu has not the effect of constituting that lease a Kanappattom lease.

Explanation II. Transfer of Jenmom lands for a consideration under such deeds as :—

(*a*) Olavu Pattom.
(*b*) Olavu Ola.
(*c*) Ner Pattom.
(*d*) Maraya otti.
(*e*) Patta otti.
(*f*) Vyal valotti.
(*g*) Patta ola.
(*h*) Maraya pattom.
(*i*) Olavu otti.
(*j*) Otti Kulickanom.
(*k*) Panaya pattom or panaya ola. or Narma pattom.
(*l*) Pattom and Kulickanom.
(*m*) Kotalikani.
(*n*) Perumpatta thettum.
(*o*) Ubbaya pattom.
(*p*) Thettom.

Shall be presumed to be on a Kanapattom lease

Explanation III. Kolavirakkom Panayam, Ner Panayam and Ner Otti mortgages, where Jenmom land is conveyed merely as security for re-payment of money or money's worth lent, and is, by express terms of the instrument, evidencing the loan to be re-conveyed or released on satisfaction of the debt, are ordinarily not to be deemed Kanapattom tenures within the meaning of this clause notwithstanding that the instrument of mortgage reserves a yearly Michavarom or residual rent to the "Jenmy" :

Provided that, where the Jenmy has, by levying Adukuvathu or other customary fees either at the time of the creation of the mortgage or at any time during the continuance of the mortgage indicated an intention to treat the tenure as a renewable lease, the tenure shall then be deemed to be Kanapattom.

(5) A person is said to " hold " land whether he retains it in his actual possession or whether he mortgages or sublets it ; and a

person shall be deemed to have held land if it has been held by himself or by a predecessor in interest or title through whom he claims.

(6) "Holding" means a parcel or parcels of land held under one instrument and one set of conditions.

(7) "Sub-tenant" means any person who holds land from a Kudiyan.

(8) "Michavarom" (Residual Rent) means the rent which is payable or deliverable annually by the "Kudiyan" to the "Jenmy whether in money or in kind or by the rendering of services or partly in one and partly in the other.

(9) "Renewal fees" means the fee or premium payable on renewal of Kanapattom leases under such denominations as Adukuvathu, Avakasom, Sakshi, Oppu Thusi, Olapanom, Thirunalkalcha, and the like.

(10) "Customary dues" means the cesses or contributions such as Onakalcha, Allakkada, Thiroonal chumadu, Purannal chumadu, Vara koppu, Oolsava koppu and the like which are payable to the Jenmi by the Kudiyan according to contract or custom.

(11) "Duly registered" means registered in accordance with the law for the time being in force relating to the Registration of assurances.

(12) "Improvment" means any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let.

CHAPTER II.

OF THE RIGHTS AND LIABILITIES OF JENMIES AND KUDIYANS,

4. Jenmies are at liberty to transfer by sale, gift or otherwise to whomsoever they like whether Brahmins or non-Brahmins the jenmom (proprietary) right in the whole or any part of their jenmom lands:

Provided that the Kudiyans shall have the right of preemption in respect of lands which they hold on Kanapattom and

that the enhancement, if any, of Sirkar tax consequent on such transfer shall be borne by the transferee and be deducted from the Michavarom.

5. Subject to the provisions of this Regulation, every Kudiyan shall have a right of occupancy in his holding and shall be exempt from liability to eviction save as laid down in section 9.

Provided that nothing in this section or in section 9 shall affect the right of a Jenmi to revoke or determine a Kanapattom tenancy on the expiration of any specified period expressly fixed in a contract made for the first time since the 25th day of Karkadagom 1042 in conformity with section 8 of the Royal Proclamation of the said date.

6. Every Kudiyan may utilize his holding to the best advantage and enjoy the products thereof in any manner which does not materially and permanently impair the value of the holding.

7. If the Kudiyan becomes aware of any proceeding by third parties to recover the holding or any part thereof on a claim adverse to that of the Jenmy, or of any encroachment made upon, or any interference with, the Jenmy's rights concerning such holding, he is bound to give with reasonable diligence notice thereof to the Jenmy.

8. (1) The right of a Kudiyan in his holding shall be heritable and transferable but every transfer shall be in writing and no transfer of a portion of the holding without the consent, in writing, of the Jenmy, shall affect the liability of the entire holding for Michavarom and other dues leviable by the Jenmy.

(2) When the transfer by sale or gift of a Kudiyan's holding in whole is made by the private act of the parties, or by a public sale, the purchaser or donee, as the case may be, shall make a written report of the transaction to the Jenmy forthwith, and the Jenmy shall, thereupon, recognize the purchaser or donee as his Kudiyan and renew the lease at the proper time on receipt of the renewal fees.

(3) When the transfer is only of a portion of the holding, the transferor or transferee shall seek the permission, in writing, of the Jenmi to the apportioning and fixing of the Kanom and

Michavarom on the portion to be transferred, and the Jenmi shall accord such permission (*a*) if the market value of the holding transferred bears the same proportion to the amount of Kanom and Michavarom reserved thereon as the market value of the entire holding bears to the entire Kanom and Michavarom reserved in the lease, or (*b*) if the terms of the transfer seem otherwise fair and equitable.

9. (1) No Kudiyan shall, against his will, be evicted from his holding or any portion of his holding except in execution of a decree of Court; and no Court shall make a decree for such eviction except for—

(*a*) non-payment of Michavarom for 12 years consecutively, notwithstanding a demand in writing made at any time after the first year's arrears shall have accrued;

(*b*) Persistent neglect or refusal to pay customary renewal fees and take a renewed lease within one year from the date on which such fees fall due and after the service upon him of a notice of demand:

(*c*) Wilful denial of Jenmy's title so as to prejudice the Jenmi's interests.

Explanation:—A denial of Jenmi's title under a mistake of fact or of law is not wilful within the meaning of clause (*c*).

(*d*) Intentional or wilful commission of such acts of waste as are calculated to materially and permanently impair the value and utility of the holding for purposes of the tenancy, and to injure the interests of the Jenmy.

(2) The written demand or notice mentioned in clauses (*a*) and (*b*) shall be tendered or delivered to the Kudiyan personally, or may be presented to the Court of the District Munsiff in whose local jurisdiction the holding is situated. If presented to such Court, it shall be served by such Court, at the cost of the Jenmi in the manner provided for the service of summons in the Code of Civil Procedure.

(3) A suit for ejectment on the ground stated in clause (*d*) shall not be entertained unless the Jenmi has served a notice on the Kudiyan specifying the particular act of waste complained of,

and, when the waste is capable of remedy, requiring the Kudiyan to remedy the same, and in any case to pay reasonable compensation for the waste and the tenant has failed to comply within a reasonable time with that request.

(4) In case of eviction, the Kudiyan shall, in addition to a refund of the Kanom money, be entitled to be compensated for improvements made by him or by his predecessors in interest for which compensation has not already been paid; and his sub-tenants, if any, shall also be entitled to such compensation in respect of improvements made by them.

10. Until the contrary is shown, the following shall be presumed to be improvements for which compensation is to be paid to the Kudiyan or his sub-tenant.

(*a*) The erection, in Purayadoms or plantations, of dwelling houses, buildings appurtenant thereto and farm buildings:

(*b*) The construction of tanks, wells, channels, dams and other works for the storage or supply of water for agricultural or domestic purposes:

(*c*) The conversion of one- crop into two-crop land:

(*d*) The drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by water, of land used for agricultural purposes, or waste which is cultivable;

(*e*) The reclamation, clearance, permanent enclosure, or other permanent improvement of land for agricultural purposes:

(*f*) The renewal or re-construction of the foregoing works or alterations therein or additions thereto:

(*g*) The planting, protection or maintenance of fruit trees and other useful trees and plants:

(*h*) The protection or maintenance of such trees, the same having grown spontaneously during the tenancy.

11. (1) The compensation to be awarded for improvements specified in the foregoing section shall be three-fourths of the amount by which the value of the holding is increased by such improvements.

(2) Our Government may, in communication with the High Court, order tables to be prepared showing rates of compensation to be paid in the case of trees, plants and vines for the several Divisions of this State, and may cancel or alter the same from time to time. The rates specified in such tables shall, after the expiry of three months from the date of publication of the table in the Government Gazette, be presumed to be proper rates awardable to the Kudiyan and his sub-tenant, if any.

(3) In awarding compensation for improvements, any reduction or remission of rent or any other advantage given by the Jenmi to the Kudiyan in consideration of an improvement shall be taken into consideration, and no compensation for an improvement shall be claimable when the Kudiyan has made the improvement in pursuance of a contract in writing binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

12. In a suit for ejectment for non-payment of Michavarom, a decree passed in favour of the Plaintiff shall specify the amount of Michavarom and of the interest (if any) due thereon and the decree shall not be executed if that amount and the costs of the suit are paid into Court within 15 days from the date of the decree or any extended period which the Court may for special reasons grant.

13. A decree passed in favour of the Jenmy in any suit for ejectment of a Kudiyan on the ground that he has committed intentional and wilful acts of waste shall declare the amount of compensation which would reasonably be payable to the Jenmy for the waste and whether in the opinion of the Court the waste is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay the amount to the plaintiff and, where the waste is declared to be capable of remedy, to remedy the same.

14. In the absence of an express written contract to the contrary, on the expiry of a period of twelve years from the date of every Kanappattom lease, and thenceforward at the end of every successive period of twelve years, it shall be obligatory on the Jenmi to give and on the Kudiyan to accept a renewal of the lease

save and except in the cases mentioned in the next following section.

15. A Kudiyan may at the end of twelve years from the date of a Kanappattom lease or of its last renewal, surrender his holding to the Jenmy after reasonable notice, and claim refund of the Kanom *minus* the renewal fees due, as also payment of compensation for improvements made by him or by his predecessor in interest.

Every surrender under this section shall be made in writing, and notice of the Kudiyan's intention to surrender shall be given to the Jenmy not less than six months previous to the commencement of the year in which the surrender is intended to be made.

16. The claim of Kudiyan for refund of Kanom and for payment of compensation for improvements shall be a charge or encumbrance on the holding and may be realized by its sale.

17. The holding of a Kudiyan shall be deemed to be hypothecated for the Michavarom and renewal fees as they fall due, and, these shall take priority over all other charges except public land revenue due on it.

18. If the Kudiyan's right is sold in execution of a decree against him, the Jenmi shall, in the event of his preferring and substantiating his claim, be entitled to be paid out of the sale-proceeds, arrears of Michavarom and renewal fees and customary dues which on summary enquiry by the Court executing the decree may be found due to him (Jenmy) by the Kudiyan.

Nothing in this section shall affect the right of the Kudiyan or of his creditor to recover by a regular suit the amount paid over to the Jenmy under the summary order of the Court, if such amount was not really due and payable.

19. Subject to the limitations and conditions prescribed in chap. III, every Jenmi may, at the time of periodical renewals of Kanappattom leases, enhance the Michavarom payable by a Kudiyan,

(*a*) by increasing the pattom assessment of the land,

(*b*) by reducing the rate of interest allowed to the Kudiyan on the Kanom money, if such rate is in excess of the market rate,

(*c*) by both the modes (*a*) and (*b*); or where the Jenmy has hitherto been levying additional Kanom (or ettartham) in lieu of enhancing the Michavarom, he may continue to do so, at the customary period.

Provided that no Jenmi shall, without the consent of the Kudiyan, be entitled to enhance the Michavarom and levy ettartham at one and the same time.

CHAPTER III.

PART A.

OF MICHAVAROM AND CUSTOMARY DUES.

20. (1) In every contract of Kanappattom lease granted or renewed after this Regulation comes into force,

(*a*) the name, description and extent of the holding,

(*b*) the Pattom assessed on the holding,

(*c*) the deductions therefrom on account of interest on the Kanom money,

(*d*) the amount of Michavarom agreed upon, and

(*e*) the renewal fees and customary dues intended to be levied from the Kudiyan, and the rate at which and the occasions on which they are to be levied,

shall be distinctly specified.

(2) (*a*) If the Michavarom or other dues are made payable in kind, it shall be specified according to the standard measure or measure or parah prescribed by our Government or in any other way most convenient to the parties.

(*b*) If any local parah or measure is used by the parties, the difference between it and the Government standard parah must be set forth in the Kanappattom lease.

21. No summary suit or claim for enforcing payment of renewal fees or customary dues shall be entertained by the Courts under this Regulatfon, unless such fees or dues as the case may be are specified in the Kanappattom lease or its counterpart duly registered.

Exception.—Nothing in this section shall affect the Jenmy's right to recover summarily the renewal fees or customary dues

under the existing Kanappatton leases, though not expressly specified in the instrument of Kanappattom lease.

22. Every Kudiyan shall pay his Jenmy the Michavarom, renewal fees and customary dues at such time and place as may be agreed upon between them in writing, and in the absence of such written agreement in the manner following, namely :—

(*a*) The annual Michavarom or net rent shall be paid on or before the 30th day of Adi of each Malabar year at the residence (Illom, Mana, or Matom) or at the Granary (Sekarippoo) of the Jenmy, provided that such residence or Sekarippoo is within the Proverthy in which the "holding" is situated ;

(*b*) Customary dues, on or before the 30th day after a letter of demand for such dues shall have been delivered to the Kudiyan or left at his usual place of residence ;

(*c*) Renewal fees, on or before the last day of the year following the period when the renewal of the lease ought to take place under section 14.

In default of such payment interest shall be charged on the arrears from the date they become due, at the rate of 9 per cent. per annum when the arrears are payable in money, and of 12 per cent. per annum when the arrears are payable in kind.

23. On payment by the Kudiyan of the renewal fees together with any arrears of Michavarom which may remain unpaid for the whole or any portion of the expired period of twelve years, the Jenmy shall renew the lease and the Kudiyan shall thereupon execute a counterpart of such lease :

Provided that when a Kanapattom lease and its counterpart containing the particulars specified in section 20 and duly registered shall have been once before exchanged between a Jenmy and his Kudiyan, the parties may by mutual agreement dispense with the execution of a fresh lease and counterpart. In such cases a receipt for payment of renewal fees shall, if duly registered, be deemed to operate to all intents and purposes as a renewal of the lease.

24. Every Kudiyan paying Michavarom, renewal fees or customary dues shall be entitled to a receipt specifying,

(*a*) the date of payment;

(*b*) the amount paid;

(*c*) the period for which it is paid;

(*d*) the holding in respect of which it is paid; and,

(*e*) such other particulars as may be necessary to elucidate the transaction.

25. (1) Every revision or re-adjustment of the terms of a Kanapattom lease at the end of 12 years shall be made by a contract in writing duly registered.

(2) If the parties cannot agree as to the terms of such revision or re-adjustment or as to the amount of additional Kanom or ettartham, the Jenmy or the Kudiyan, as the case may be, may institute a regular suit in a Civil Court of competent jurisdiction for the purpose of compelling the other party to accept the terms proposed by him, or such other terms as to the Court may seem fit.

(3) Notwithstanding anything contained in the Stamp Regulation, no such contract of Kanappattom executed in renewal of a prior contract of lease shall be subject to stamp duty when the annual Jenmy Pattom reserved in such renewed lease does not exceed 50 Rs. in value.

(4) In the absence of an express contract to the contrary, the cost of Stamp and Registration on account of renewal deeds shall be borne by the Jenmy and Kudiyan in equal shares.

26. The Jenmy of a holding shall not be entitled to claim an enhancement of the Pattom assessment fixed under any existing lease except on one or more of the following grounds, *viz.*,

(*a*) in the case of paddy lands:—

(1) That the area of the holding actually under cultivation is in excess of the area on which the Pattom was previously fixed;

(2) That the rate of current Pattom is below the prevailing rate paid by Kudiyans for lands of a similar description and quality, with similar advantages, in the same elai or valley, and that there is no reason for his holding at so low a rate;

(3) That the productive powers of the land comprised in the holding as compared with those powers at the time when the current Pattom was fixed have increased from causes not merely temporary or casual:

(*b*) in the case of other lands, in addition to the foregoing grounds :—

(1) That the number of fruit-bearing trees in the holding has increased ;

(2) That there has been a rise in the average local prices of the produce of the trees in the holding during the currency of the present Pattom.

Provided that if the increase in the area or number of fruit-bearing trees or in the productive power of the soil, clauses (*a*) 1 and 3 and (*b*) 1, has been effected at the expense of the Kudiyan, the enhancement shall not exceed one-fourth of the Pattom due to such increase.

27. (*a*) The assessment by the Courts of Pattom (or csutomary rent) on paddy lands shall ordinarily not exceed one-third of the net produce.

Explanation.—For the purpose of this section the "net produce" shall be taken to be the estimated average annual yield of any land, less the quantity of seed sown and the actual expenses of cultivation.

(*b*) The assessment by Courts of Pattom on Purayadoms or plantations shall, in like manner, not exceed one-fourth of the estimated average annual yield of the taxable trees, growing thereon, commuted into money at the average market rate, the average being based upon the market price of the different kinds of staple produce for 12 years preceding. If no such trees exist, the Pattom shall be assessed on the land at the Payattu pattom rate prevailing in the proverthy.

(*c*) The Pattom so assessed on paddy lands and plantations shall be subject to deduction on account of interest on the Kanom money, but not on account of existing Sircar tax which shall be paid by the Kudiyan out of his share of the produce.

Provided that nothing in this section shall entitle a Kudiyan to an abatement of Michavarom under the existing lease merely

on the ground that the amount of Pattom therein fixed by mutual contract exceeds the Pattom assessable under this section.

Provided further that notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

28. The amount of additional Kanom or ettartham leviable by the Jenmy at the time of renewal of Kanapattom leases, when such is leviable under the provisions of this Regulation, shall not without the consent of the Kudiyan exceed six times the amount of the enhanced Michavarom which would have been payable by the Kudiyan had the Jenmy claimed such enhancement under the provisions of sections 25 and 26.

29. A Kudiyan may claim reduction of Pattom on the grounds

(*a*) that the area of his holding has been diminished by the action of sea, river or lake or otherwise,

(*b*) that the soil of the holding has, without the fault or neglect of the Kudiyan, become permanently deteriorated,

(*c*) that, in the case of gardens, there has been a fall in the average local prices of the produce of the trees in the holding during the continuance of the current pattom,

(*d*) that the number of fruit-bearing trees in the holding has considerably diminished by causes not preventible by the Kudiyan.

30. Our Dewan with Our sanction may, from time to time, by notification in the Gazette, make rules requiring the Court to associate with itself, for the purpose of assessing pattoms and re-adjusting Michavaroms and Kanoms under sections 25, 26 and 27, or of estimating the compensation to be awarded under sections 10 and 15 for an improvement, such number of Thadastars as Our Government thinks fit and determining the qualifications of those Thadastars or assessors and the mode of selecting them.

PART B. DEPOSIT OF RENT AND CUSTOMARY DUES IN COURT.

31. If any Kudiyan tenders to the Jenmy the full payment of Michavarom or renewal fees or other dues as they fall due, and if the Jenmy is not ready or willing to accept the tender and grant a receipt forthwith, or if the Kudiyan entertain a *bona fide* doubt as to the party entitled to receive the Michavarom and other dues, the Kudiyan may apply to the Munsiff's Court within whose jurisdiction the holding is situated for leave to deposit such amount in Court to the credit of the Jenmy.

32. The application shall specify, as far as possible,

(*a*) The local name, description and extent of the holding,

(*b*) the particulars of the tenure on which the holding is held by the Kudiyan,

(*c*) the full amount of Michavarom renewal fee or customary dues due up to date, and

(*d*) the circumstances under which the application is made; and shall be verified in the manner prescribed by the Code of Civil Procedure, for the verification of plaints.

33. The amount of Michavarom or other dues shall be paid into Court at the time of the application, the price of grain or other commodities payable as Michavarom or dues being commuted into money at market rates.

34. The Munsiff shall, upon such payment as aforesaid, issue a notice to the Jenmy, or other parties claiming a right to the recovery of the Michavarom and dues calling upon him or them to show cause why the payment should not be accepted and a receipt granted to the Kudiyan.

35. (1) On the day fixed for the appearance of the parties or on any other day to which the hearing of the application may be adjourned, the Munsiff shall hear the objections, if any, of the Jenmy or other parties claiming the right to receive the Michavarom and dues, and on being satisfied that the full amount due up to date has been paid into Court by the Kudiyan and that the Kudiyan is entitled to make the application, shall grant a receipt in the form prescribed by section 24.

(2) If the amount paid into Court be less than what is justly due to the Jenmi at the date of the application, the Munsiff shall reject the application, unless the Kudiyan offers to make good, and does make good the deficiency within two weeks.

(3) In all cases where a receipt is granted by the Court, the deposit shall be paid over to the Jenmi or other party appearing on a summary investigation to be entitled to the deposit, if an application for such payment be made within three years from the date of service of notice upon the Jenmy or other claimant.

(4) Nothing in this section shall affect the right of any party to recover the amount by a regular suit from the party receiving the deposit under the summary order of the Court.

(5) A receipt granted by a Court under clause 1, shall operate as a full acquittance of the amount paid into Court and shall have the same force and effect as a receipt granted by the Jenmi himself.

36. Every application made under section 31 shall be exempt from payment of Court fees, if the application relates to Michavarom or other dues which accrued due within the preceding twelve months.

In other cases one-fourth of the usual fee on applications to a Munsiff's Court shall be leived.

PART C. OF THE JURISDICTION OF COURTS OVER PETTY CLAIMS FOR MICHAVAROM AND CUSTOMARY DUES.

37. Claims by Jenmies for recovery of arrears of Michavarom, renewal fees or customary dues shall, when the amount or value of such claim does not exceed Rs. 100, be taken cognizance of, and disposed of summarily by the Courts hereinafter mentioned.

(1) District Munsiff's shall have jurisdiction in respect of all such claims where the amount or value of the claim does not exceed Rs. 50 (Fifty).

(2) Zillah Judges shall have similar jurisdiction where the amount of value of the claim exceeds Rs. 50 but does not exceed Rs.100.

38. (1) Except as otherwise provided by this Regulation, the procedure prescribed by any law for the time being in force for trial of small causes shall be the procedure to be followed by the District Munsiffs and Zillah Judges in all suits summarily cognizable by them under the foregoing section, and in all proceedings arising out of such summary suits.

Provided that, an applicant for an order to set aside a decree passed *ex parte* or for a review of judgment shall at the time of presenting his application either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give security to the satisfaction of the Court for the performance of the decree or compliance with the judgment as the Court may direct.

(2) When a person has become liable as security under the Proviso to sub-section (1), the security may be realized in manner provided for the execution of a decree against the surety.

39. The cause of action for recovery of such claims shall be deemed to have arisen at the place where the holding in respect of which the claim accrued is situated and the suit shall, subject to the provisions of section 37, clauses 1 and 2, be preferred to the Court within the limits of whose territorial jurisdiction the cause of action shall have arisen as aforesaid.

40. The plaint in such suits shall be exempt from payment of Court fees, if the claim be for recovery of arrears which accrued due within twelve months next preceding its institution. If otherwise, a Court fee of one-fourth the amount which would have been required had the claim been instituted as a regular suit in a competent Court, shall be levied on the plaint.

41. Any agent or Vicharippukaren of a Jenmy or any agent of a Kudiyan, duly empowered in this behalf by a written authority under the hand of the Jenmy or the Kudiyan, as the case may be, shall, for the purposes of a summary suit or application under this Regulation, be deemed to be a recognized agent of the Jenmy or the Kudiyan, as the case may be, within the meaning of the Code of Civil Procedure, notwithstanding that the Jenmy or the Kudiyan may reside within the local limits of

the jurisdiction of the Court in which the suit is to be instituted or is pending or in which the application is made.

42. If, in the decision of a suit cognizable summarily by a Munsiff or Zillah Judge under section 37, it becomes necessary to decide incidentally any matter in dispute between the parties to the suit, concerning title to immoveable property or the status of either of them or of those under whom they claim, which, if it had been the immediate subject-matter of the claim, would not be cognizable by the Munsiff or the Zillah Judge under the small cause procedure, it shall be competent to the District Munsiff or the Zillah Judge as the case may be, to decide such question of title to immoveable property or status, so far as it may be necessary to do for the determination of the summary suit ; but such decision shall not be conclusive evidence of such title or status in any other action between the same parties or their representatives, nor shall it debar the parties or their representatives from re-agitating the matter in a regular suit.

43. (1) In determining claims for Michavarom, renewal fees and cutomary dues, the Court shall be guided by the express terms, if any, of the contract of lease under which the claim is made.

(2) If the contract is silent as to all or any of the dues payable to the Jenmy or if the terms of the contract are not explicit enough as to the rates of such dues, the Court may be guided in its decision by the Registrar of fees and dues prepared by the Commissioners appointed under Regulation I of 1060 which may be deemed *prima facie* evidence of the facts therein recorded until the contrary is proved.

(3) If, in any case, the claims for fees and dues of the particular Jenmy—Plaintiff in any such suit have not been included in the Commissioner's Register, the fees and dues recorded in the said Register as the fees and dues usually leviable by the Jenmies in the local area or Division in which the holding in connection with which the claims accrued, is situate, may be taken as a guide by the Court until the contrary is proved.

44. (1) When a Kudiyan-Defendant admits that money is due from him on account of Michavarom or renewal fees or

customary dues but pleads that it is due not to the plaintiff, but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea, unless the defendant pays into Court the amount so admitted to be due.

(2) When such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within three months of the notice institutes a regular suit against the plaintiff and therein obtains an order restraining payment of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this Section shall affect the right of any person to recover from plaintiff the money paid to them under sub-Section (3).

45. No appeal shall lie from decisions of Munsiffs and Zillah Judges passed in summary suits under this Regulation.

46. The High Court may, of its own motion or on the application of any of the parties, call for and examine the records of any summary suit or proceeding before a Zillah Judge or Munsiff under this Regulation, and satisfy itself as to the legality or propriety of any decision or order passed in such summary suit or proceeding.

47. If, in any case called for as provided in the last preceding section, it appears to the High Court that the subordinate Court acted without jurisdiction or that there has been a substantial failure of justice caused by any decision or order of any such subordinate Court, the High Court shall pass such judgment, decree or order thereon as it thinks fit.

Provided that no judgment, decree or order in supersession of the decision or order of the subordinate Court, shall be passed by the High Court without giving the parties an opportunity of stating their case either personally or by Vakils.

48. The High Court may, from time to time, make rules consistent with this Regulation for regulating the practice and procedure of the Courts acting under this Regulation. The rules so made shall be published in the Gazette.

OBJECTS AND REASONS.

The object of this Bill is (as recited in the Preamble) to carry out in its entirety the intention of the Royal Proclamation of 25th Adi 1042—the existing statute law governing the relation between certain classes of land-lords (Jenmies) and their (Kanappattom) tenants. That Proclamation was the outcome of a careful consideration of the views put forward by the responsible advisers of Government on a controversy which was long pending in regard to the rights of Jenmies to oust their Kudiyans; and it chiefly aimed at conferring on the (Kanappattom) tenants fixity of tenure by checking capricious evictions and restricting the demand for exorbitant rents and renewal fees on the part of the Jenmies, and securing to the latter punctual payment of rent and other customary dues and their customary right to re-adjust rent at the periodical renewals. The wisdom and expediency of this measure has been fully admitted even by those who question the authenticity and validity of the facts and arguments on which it was based. It is noteworthy that the enlightened policy—*viz.*, to secure to the tenant fixity of tenure, freedom from arbitrary eviction and fair (that is, freedom from arbitrary and unfair enhancement of) rent—which was adopted in the Royal Proclamation underlies all modern legislation on this important subject in all civilized and progressive countries. Witness the recent acts of the Government of India relating to Landlords and Tenants in Bengal, North West Provinces and Punjab.

2. While then the principle of the Proclamation is unquestionable, there is nevertheless a widespread complaint that, what with the ambiguity in the wording of certain sections and the conflicting decisions of the courts consequent thereon and the absence of a statutory provision for the easy collection of the Jenmies' dues, the absence of which, so long as they were allowed to hold the power of summary ejection *in terro rem* over their recalcitrant tenants, they did not feel, the Jenmies are subjected to hardship under the operation of the Proclamation; and their complaints have been found to be not altogether unfounded. In a Memo which the British Resident Mr. Fisher, who had carefully studied the question of how to equitably adjust the relative rights of Jenmies and tenants, addressed the Sadr

Court in 1864, he wrote: "All, therefore, that seems to be wanting now is, first, to recognize the Kanom tenure as *renewable* periodically, but not *revocable* so long as the holder pays the Michavarom and other fees demandable on renewal by the Jenmies, *secondly, to simplify as much as possible the means of recovering the Michavarom and fees* and to provide for the periodical renewal of deeds and payment of fees by such arrangements as will make the tenant's title depend on punctuality and ensure for him equal punctuality of renewal of his title, by withholding the fees payable thereon until the title is renewed ... ..." The italics are mine.

In the concluding paragraph of the able Memo which contains the Objects and Reasons of the Royal Proclamation above referred to, Rajah Sir T. Madava Row proposed *inter alia* "that another enactment be also framed as very properly recommended by the late Resident (Mr. Fisher) in the interests of the Jenmies in view to facilitate the recovery of rent and dues from the tenants." This proposal, however, has not been carried out; but, be the cause of this omission what it may, there is no doubt that the evil is one which calls for prompt remedy. "It is enough for our present purpose" to quote the words of the late Mr. Ramiengar "to state that that measure (the Royal Proclamation) is professedly incomplete and that the result has been such as to point to the necessity of repairing the omission without further delay."

In 1060 M. E., a roving commission (with Mr. Justice Kunhi Ramen Nair as President and one official and two non-official members) was appointed to enquire into the nature of the relations between Jenmies and their tenants, and to record evidence with a view to obtaining reliable data upon which to base any further legislation that might be deemed necessary. The Commission have collected a vast deal of information on the subject; and, after a careful and patient investigation of the relations between Jenmies and tenants, they have arrived at the conclusion that the leading principles of the existing law should be left untouched, but that the latter should be re-enacted with such alterations and additions as the experience of its working for the last quarter of a century has suggested.

This Bill which is in substance what has been drawn up and submitted by the Commission, while steadily keeping in view the principle of the Royal Proclamation of 1042 and of the customary law which it affirmed, seeks to place the whole law on a more satisfactory footing by defining the relative rights of Jenmies and Kudiyans as affirmed by the Royal Proclamation, and to supplement it by provisions necessary for the speedy realization of the rents and other customary fees due to the Jenmies.

Section 2 is intended to guard against it being supposed that no usage, not expressly recognized by this Regulation, can be legally enforced even though such usage satisfies all the requisites of a valid custom and is not inconsistent with this Regulation. The Illustration appended is taken from a decided case.

Section 3, (1) & (2). The definitions attempted in this section will speak for themselves. The Royal Proclamation contains no definition of the terms 'Jenmom land' and 'Jenmy', and great ambiguity attaches to the meaning of these terms. The decision of the Courts, based evidently on the origin of Jenmom property given by RAJAH SIR T. MADAVA ROW, is that the term Jenmy can only be applied to those who are supposed to have obtained their land in gift directly from Parasu Raman, the reputed original reclaimer or conqueror of Kerala, and as the donees presumably were and could be only Malabar Brahmins, none but such Brahmins could be Jenmies even though they have acquired *plenum dominum* over Jenmom property by purchase or otherwise from Brahmin Jenmies. "In strict theory, Jenmom was originally considered a sacred heritage, or in other words, a privilege which could only be possessed by the Brahmins and others on a level with them, *viz.*, the Pagodas or Devaswams. In course of time, other classes shared the privilege with the Brahmins.............and there are thus, besides Brahmins and Pagodas, others who have from time immemorial been popularly known as Jenmies. Though it is inexpedient to include every one of them in the term Jenmy for the purpose of the present law and thus deprive them of the right of ouster which they have long enjoyed, especially as most of them cannot now be said to be a non-cultivating class, a very few at least should, in furtherance of the principles which dictated the policy of the

Proclamation, be included in the term, and these are the representatives of the petty Chiefs who once held sway over their respective petty states and who have hitherto been conducting themselves in their relation with their Kanappattom tenants in all respects as Brahmaswom and Devaswam Jenmies (*a*)."

(*a*) Jenmy and Tenant Commission's report.

Clause (1) (*a*) defines Jenmom lands in accordance with the existing ideas on the point.

Clause (*b*) is so worded as to include and to include only the representatives of such of the Edavagas or Swaroopams as are possessed of lands recorded in the Revenue accounts as Adhikara olivu and Desa olivu.

Clause (*c*) is intended primarily to meet the cases of lands which have been reclaimed from waste since the last survey and not hitherto recorded in the Revenue accounts: and secondarily to bring under the pale of the proposed law the representative of Edavagas or Swaroopams.

Clause 2 is intended to do away with an apparent anomaly in the existing law as judicially interpreted. It is now sought to include in the term Jenmy an acquirer of Jenmom lands by purchase or gift. At present, a Brahmin who acquired the proprietary right within living memory from a Non-Brahmin, as well as a Non-Brahmin who acquired the proprietary right at any time whether from a Brahmin or Non-Brahmin is not a Jenmy. "But if the Brahmins are to be subject to the Proclamation law with regard to their ancient landed estates of a certain description, there is no reason why their modern acquisitions of the same description of estates should not be subject to the same law. There is further no reason why a Non-Brahmin purchasing the estates which until his purchase were subject to the Proclamation law should be enabled by such purchase to take the estates out of the rule of the Proclamation (*a*)."

(*a*) Report of Jenmy & Tenant Commission.

In Malabar and in Cochin, the Jenmom right has been the subject of free sale; but there, such lands are not free from tax. The absence of a statutory provision legalizing such sales causes loss to the Jenmies, inasmuch as they are not able to get the full

value of their properties. This must operate as a drag on their improvement. Acquirers of Jenmom right by purchase or gift have therefore been included in the definition of the term Jenmy, and a section has been added (Section 4) making the transfer of Jenmom rights legal.

The term 'Kudiyan' has been restricted to the holders, on Kanom tenure, of Jenmom lands. Other tenures are not intended to be brought within the purview of this law, and no necessity for any special legislation on the subject of other tenures has hitherto been felt.

The term 'Kanappattom' has been defined in accordance with the popular conception of it, which happens to tally with the interpretation put upon it by the Courts. The words "or understood to be payable at the time of renewal of the document" are intended to bring under the term those cases in which the Adukuvathu is not paid at the creation of the document, but only at its renewal. Explanation I is taken from a decided case and is intended to avoid misconception.

As different names are used in different parts of the country for the same tenure, Explanation II is intended to indicate what deeds are intended to be brought under the definition.

Section 4. This section recognises the right of the Jenmy to transfer his Jenmom right by sale, gift, or otherwise to whomsoever he likes, whether Brahmins or non-Brahmins. Hitherto the sale by a Brahmin was to be confined to one of his own class, and it was doubtful whether sales to non-Brahmins would be recognised as such. This supposed restriction based upon ancient idea has in some cases operated as a hardship upon the Jenmies and Kudiyans alike. The first part of the proviso is intended to reduce as far as possible the evils of dual ownership, which is an objectionable feature of Kanappattom tenure, by giving the occupancy-tenant an opportunity of converting his land into free-hold.

The second part of the proviso protects the tenant who has been holding lands on the belief that the tax he has to pay to Government will not be enhanced so long as he continues to pay the stipulated rent and other dues to his Jenmy, from any enhancement of tax to which, under the Revenue law or practice, the land may be subjected on transfer.

Section 5, which confers on the Kudiyan occupancy rights, is simply the re-affirmation of the principle laid down in the Royal Proclamation.

Section 12 of the Proclamation reserved to Jenmies, who may desire to secure the right of revocation, the liberty to make an express provision to that effect in future transactions. This salutary provision, which simply recognized freedom of contract in respect of future cases, has been held to extend to transactions anterior to the date of the Proclamation. The Proviso has been so worded as to remove this ambiguity.

Sections 6 and 7 are taken from the British Indian Transfer of Property Act IV of 1882, section 108, clauses (A) and (B), and are intended to reduce to a minimum the evils of the right of ejectment.

Section 6 protects the interest of the Jenmy without unnecessarily restricting the enjoyment of the Kudiyan, and section 7 is intended to protect the interests of the Jenmies who generally live far away from their estates.

Section 8, which recognizes the right of the Kudiyan to transfer his holding to a third party, is but a re-production of the existing customary law. The provision as to notice to Jenmy in case of transfer of the whole holding and that as to obtaining the consent of Jenmi for transferring portions of a holding are necessary to enable the Jenmy to know from whom and in what proportion to demand his dues. At present there is a wide complaint that Jenmies are put to loss in suing tenants who have transferred their holdings, and by the arbitrary splitting up of holdings by the tenants.

Report of the Jenmy & tenant Commission.

Section 9 specifies the grounds on which a tenant may be ejected from his holding. "These are all breaches of fundamental conditions of the holding and are on general principles of law such as to work a forfeiture of the tenancy."

Sub-clause (*a*) is a re-production of the present law (section 3 of the Proclamation) with the addition that the demand for the arrears should be in writing. This is intended to check perjury. The clause is also so worded as to obviate the difficulty experienced by the Courts and the public in determining the period at

which the demand should be made. The absence of a penalty for wilful violation of the duty cast upon the tenant of taking a renewal lease and paying the renewal fees at the end of every twelve years, has been long felt and clause (*b*) of section 9 is intended to meet this want.

Sub-clauses C and D are not specified in the Royal Proclamation as grounds working a forfeiture, but they are based on the general law of Landlord and Tenant and are in conformity with the course of decisions of the Courts in this country.

Clause (2) is intended to do away with the difficulties which the Jenmies might experience in proving service of notice upon tenants.

Clause (3) has been taken from the Bengal Tenancy Act VIII of 1884, Section 155, and is intended to check hasty and unnecessary litigation.

Clause (4) and the following Section 10 deals with the important question of compensation for improvement made by the tenant and have been drawn on the lines of the Malabar Compensation for Tenants Improvement Act (Madras Act I of 1887). These Sections simply embody in clear language the provisions of the existing law.

Section 11 clause (1), which specifies the amount of compensation payable to the Kudiyan, is at variance with the principle adopted in the British Indian Acts, but it appears to be in conformity with local usage and the spirit of the Hindu law.

In British India, the tenant, is allowed as compensation the full market value of the improvement. As the land or rather the inherent qualities of the soil constitute as important a factor as the expenditure of the tenant's capital and labour in the results of all improvement and as it is, in practice, difficult to determine in each case the proportion at which each of these elements contributes towards the result, the principle of compensation adopted in this section may be considered as being just to both parties.

Clause (2), following Act I of 1887 already noticed, is intended to facilitate the speedy adjudication of questions regarding the rate of compensation for each class of trees.

Clause (3) is taken from the Bengal Tenancy Act, section 83, clause (3), and section 83, clause (d), and recognizes the contracts which parties may, of their own accord, enter into.

Sections 12 and 13 have also been taken from the Bengal Tenancy Act. They afford sufficient protection to all honest Kudiyans from unjust or arbitrary ouster, and they equally protect the right of the Jenmy, as the relief to the tenant is made contingent on the payment by the Kudiyan of his claims inclusive of costs.

Section 14 prescribes the obligation, which is implied in the Proclamation, of the Jenmy to give and of the Kudiyan to take a renewal at the end of every successive period of 12 years. The words "in the absence of an express written contract to the contrary" have been added to save cases in which the Jenmies may have, by express contract, permitted tenants to hold in perpetuity or for a longer period than 12 years without a renewal or payment of renewal fees.

Section 15 gives the tenant right to surrender his holding and recover his Kanom and value of his improvements. This is in accordance with the existing usage and the decisions of the Courts. The propriety of deducting the renewal fees from the Kanom is questioned in some quarters, inasmuch as such fees constitute a consideration for the concession to hold for another term of years and are generally paid in advance. But the enquiries by the Commission have shown that payment of renewal fees in advance at the first creation of the tenancy has not been universal, and, in view of the difficulty which the Jenmies may experience in getting a new tenant to take up the land on payment of a fee in addition to Kanom, the above provision appears to be equitable.

Sections 17 and 18 are intended to protect the rights of the Jenmy and to facilitate the recovery of his just dues. They are not inconsistent with the existing customary law.

Section 19 recognizes the right, which the Commission have found by custom to exist, of the Jenmies to revise the Michavarom at the renewal of leases. The principle according to which the revision is to be made and the rates of enhancement

admit of considerable doubt and vary in different localities. This is dealt with in Section 26. The words 'if such rate is in excess of the market rate' have been added to clause (b) to check arbitrary and unjust reduction of interest.

Sections 20 and 21. The object of these Sections is thus explained by the Jenmy commission: "One of the evils of the present system is that the Jenmies and tenants do not insert in the lease deeds all the terms of the contract of tenancy. The parties take it for granted that custom will regulate everything for them and that local custom must be known to any and every body who may at any time be called upon to decide any disputes between them......There is at present great confusion of ideas as to the rate of fees and cesses payable by the tenants to the Jenmies and it is better that the parties should be left to settle the rates between themselves amicably in all future cases." The issue of a Royal Proclamation stating that after a fixed date all the official transactions in connection with the Kanappatom lands will be regulated by the terms of the lease as expressed in the document itself and that all parties concerned should accordingly be careful to express definitely and accurately the terms and conditions of the engagement in the document was recommended by the Resident Mr. Newill in a Memo dated 5th May, 1866, and the importance of requiring the parties to reduce all the terms into writing cannot be exaggerated.

Section 22 adopts the existing practice and it gives the parties liberty to regulate the periods of payment of Michavarom and customary dues according to their convenience in individual cases.

Section 23. As the Kanom tenancy is practically permanent, there is no reason why once the contract with all the particulars required by law has been duly registered and when no change in the terms is desired by the parties themselves, they should be put to the expense of drawing up fresh deeds on stamped papers. The practice of granting a new receipt in lieu of a renewal deed even now obtains in some parts of the country.

Section 25 clause (3). The object of this section is thus explained by the Commission "The renewal of Kanappattom leases of small holdings should in the interests of the poorer classes

of agriculturists be exempted from stamp duty altogether. It often happens that one and the same document has to be renewed at least five or six times in the course of a generation under the present law, and every such renewal is to be made by a fresh deed in which a heavy stamp duty has to be paid, as if it were a document creating the tenure for the first time. The principle of exempting agricultural leases of small holdings has been recognized in the Stamp Regulation itself, and the exemption may, in consideration of the peculiar circumstances of renewed Kanappattom leases, be extended to the latter classes of documents as well."

Section 26. Section 19 having declared the right of the Jenmy to enhance the Michavarom, this section specifies the grounds on which an enhancement may be claimed.

Clauses (1) and (2) are equitable and call for no remarks. The words 'and that there is no sufficient reason for his holding at so low a rate' have been taken from the Bengal Tenancy Act.

Clause (3) goes far beyond the law in British India where enhancement of rent due to the increase of productive powers is allowed only if the improvement has been effected at the expense of the landlord, or where it, is due to 'fluvial action'; but this clause includes even improvements effected solely at the expense of the Kudiyan. The Jenmi Commission defends this, on the ground that the land of the Jenmy is as important a factor in the production of wealth as the industry and capital of the tenant and that "the Hindu theory and practice which have been followed in Travancore for generations look upon the owner or proprietor as a co-sharer with his tenant in respect to improvements made by the latter."

On strict economical principles, the Jenmy cannot be allowed the claim to share with the tentant any addition to the letting value of the land due to the expenditure of the capital and labour of the latter; but his right to enchance rent must be confined to what is called the 'unearned increment'. In defence however to the usage which is found to exist and by which the Jenmy appears to have enjoyed the right of sharing the benefits of improvements effected by the Kudiyan, a proviso has been added giving to the Jenmy liberty to enchance rent to the extent of one-fourth of the improvement—the principle of apportionment

being the same that has been adopted in assessing compensation to out-going tenants (*vide* Section 11 of the Bill).

Section 27 embodies the existing customary law on the subject of assessing Pattom on paddy lands and gardens. The first proviso is intended to protect the existing rights of the Jenmies, and the second, taken from the Bengal Tenancy Act, to protect the interests of the tenants in exceptional cases.

Section 28 is intended to prevent Jenmies from making exorbitant demands on account of Ettartham or additional Kanom. A limit is necessary in the interests of both parties.

Section 29 clauses (a) to (d) are the converse of clauses 1, 3, 4 and 5, of section 26.

Section 30 has been drawn on the lines of Section 5 clause (2) of Madras Act No. I of 1887. It is also in accordance with the time-honored custom of this country and the practice at present adopted by some Courts at least in the disposal of such cases as are contemplated in the section.

Section 31. Sections 31 to 36 are but amplifications of the law as contained in the Royal Proclamation of 1042. The Kudiyan is allowed to deposit rents and dues not only when the Jenmy refuses to receive them, but also when the former entertains a *bona fide* doubt as to the party entitled to receive them. This provision is necessary especially in connection with Devaswoms, whose trustees are 'not unfrequently at logger-heads.'

Section 35. There is, at present, a general complaint on the part of the Jenmies that even though the intention of the Royal Proclamation was that the Kudiyan should deposit in Court the whole arrears due up to date, the courts do not, owing to the absence of express provisions to that effect, satisty themselves on this point. It is, therefore, provided in clauses (1) and (2) that the deposit is not to be accepted by the Court unless it is satisfied that the amount covers the whole arrears up to date and that the Court should reject the application unless the whole amount is deposited within two weeks.

Clause (3) is intended to protect the interests of other claimants than the one to whom the Munsiff may have awarded the deposit by his order passed on a mere summary inquiry.

Section 36. Section 5 of the Royal Proclamation exempts every application of the kind referred to in Section 31 from payment of Court fees. The modification in Section 36 is intended to secure greater punctuality in the payment of rents and dues by tenants, by limiting the exemption from payment of Court fees to such Kudiyans as are diligent, *i.e.*, who do not allow the rents and dues to fall in arrears for more than a year after they shall have become actually due.

Sections 37 to 48 deal with judicial Procedure.

Section 37 authorises the Munsiffs and Zillah Judges to dispose of summarily all claims by Jenmies for recovery of arrears of Michavarom and other dues when the amount or value of such claims does not exceed 50 and 100 rupees respectively. The object of this provision is best stated in the words of the Jenmi and Tenant Commission. "One of the chief complaints" they write " made by the Jenmies which on enquiry was considered to be not wholly unfounded is that, while the statutory rights of occupancy were conferred on their Kudiyans, no facilities had been accorded to the Jenmies for the prompt enforcement of their claims, and that the rents and dues to the Jenmies are consequently not being paid punctually by the Kudiyans. It was intended at the time the Royal Proclamation of 1042 was issued to introduce the provisions of the old British Indian Regulation (Madras Regulation 28 of 1802 and 5 of 1822) since superseded by the Madras Rent Recovery Act VIII of 1865, but on consideration these Regulations were probably found unsuited to the peculiar circumstances of the Jenmies in this State.

"The power of distraining for arrears given by the Madras Regulations to the landlords is a power liable to great abuse in the hands of needy agents of Jenmies, and cannot be safely entrusted to them without causing wide discontent. Distraint was unknown to the Travancore and Malabar system of land tenures and the introduction of the novel procedure of distraint by private landlords cannot be thought of until other and less objectionable remedies have been tried and found inefficacious, One remedy for the evil complained of, and a remedy open to the least objection, is to allow the Jenmies the benefits of the

small cause procedure of the courts in determining the claims not only for rents properly so called but also for customary dues and to extend the small cause jurisdiction of the Munsiffs and Judges to claims of Jenmies—the value of which may not exceed Rs. 100. The Munsiff should try all claims of the value of Rs. 50 and under, while the Zillah Judges may be left to try the claims of a value exceeding Rs. 50."

Section 38 extends the small cause procedure to cases contemplated in the preceding section, and the proviso drawn on the lines of Provisos (1) and (2) to Section 17 of British Indian Act I of 1887 is intended to check frivolous applications for setting aside *ex parte* decrees and for reviews of judgment.

Section 39. In the absence of an express provision such as is contained in this section, the claims will have to be lodged, under the ordinary law of procedure, either in the Court having jurisdiction over the place where the defendant resides, or where the contract of lease or its violation took place. These places may not always be the locality in which the property is situate and it is convenient to both parties that the claim should be heard by the Court having jurisdiction over the land.

Section 40 exempts plaints from payment of Court fees wholly or partly according as they relate to claims for arrears which accrued within the preceding twelve months or not. The Royal Proclamation having exempted the Kudiyans from payment of Court fees on applications made by them for permission to deposit rent in Courts, it is but fair that the exemption should be extended to Jenmies also. Indeed, the exemption would really operate as a relief to the Kudiyans who will eventually have to bear the fee in the great majority of cases where the Jenmies' claims are decreed by the Courts. "It has always been the policy of the State" to quote the words of the Jenmy Commission "to afford such relief to the agriculturists as is compatible with its duty to the general body of its subjects, and the exemption from Court fee under certain circumstances of the plaints in suits for the recovery of one year's rent and dues does not involve a large sacrifice of revenue. The chief thing that deters the Jenmies now from resorting to the courts for the recovery of their rents is the heavy Court fee to which the plaints are now

liable, and as the Government for reasons of State policy do not consider it expedient to vest the Jenmies with the powers of distraint of crops, which their brethren elsewhere possess, it is but proper that the Jenmies should be afforded facilities for recovering their rent in other less objectionable ways."

Section 41 is borrowed from the Bengal Tenancy Act.

Section 42, drawn on the lines of Section 19 of the Madras village Munsiff's Act I of 1889, is intended to guard against the possibility of the claims for rents and dues being thrown out on technical grounds. The rights of all parties concerned are sufficiently protected by the last part of the Section which provides that the decision in the summary suit shall not operate as *res judicata*.

Section 43, clause I, provides that, where an express contract exists, the courts may decree according to the terms of such contract. Clauses (2) and (3) permit the Courts to take the Register prepared by the Commission as *prima facie* evidence of the nature and amount of the dues due to the Jenmies where of course the same are not specified in the deeds themselves. This will facilitate the disposal of suits, while it can cause no harm as the parties are at liberty to contest the facts stated in the Register and adduce evidence to prove their contention.

Section 44 is borrowed from the Bengal Tenancy Act and is intended to check frivolous denials of the title of the Jenmies by the Kudiyans.

Sections 46, 47 and 48 provide for the exercise by the High Court of certain revisionary powers which are necessary to remedy any possible injustice which may be done by the subordinate Court, vested with summary jurisdiction.

P. THANU PILLAY.

APPENDIX C.

The Report of the Select Committee on the Jenmy and Tenant Bill.

Letter from the High Court to the Dewan giving their opinion on the Bill.
Petitions from Jenmies containing their observations on the Bill.
Do. from Kudiyans do. do.
Letter from the Parappanad Rajah.

We, the undersigned, members of the Select Committee to which the Bill relating to Jenmies and Kanapattom Tenants was referred, have considered the Bill together with the papers noted in the margin and have now the honor to submit this, our report.

In the preamble we have omitted the parenthetical words "Landlords," "Kanapattom Tenants" and "residual rents" after the words "Jenmies," "Kudiyans" and "Michavarom" respectively, as the terms which they are intended to explain are clearly defined in the body of the Bill. We have, in view to bring out the fact that the present Regulation repeals the Royal Proclamation of 1042, substituted the words, "We are, in supersession of the Royal Proclamation above recited, hereby pleased to enact" for the words "It is hereby enacted."

NOTE.—The sections quoted refer to those of the original Bill unless otherwise specifically stated.

2. SECTION (1). For reasons explained in the previous para, we have omitted the words, "Landlord" and "Tenant" added parenthetically to the words "Jenmy" and "Kudiyan" respectively.

3. SECTION (2). The section being clear enough, we have omitted the illustration, which, referring as it does only to what obtains in particular parts of the country, might, we are afraid, lead to wrong construction.

4. SECTION (3). For the words "Definitions and rules shall apply in the construction of this Regulation" we have substituted the words "Expressions shall have the meanings hereby assigned to them." The modification is merely verbal, but intended to make the section plainer.

5. (1) (*a*). We have omitted the words "or Land Register of this State" as being supererogatory, the expression "Ayacut accounts" which the above words are intended to elucidate having a definite and well understood meaning. We have also substituted "or" for "and" between the words "Brahmaswom" and "Devaswom" as these words have distinct connotations and apply to different sets of lands.

6. (*b*) and (*c*). We have transferred these two clauses as, with the modification we have made in (*c*), the proposed arrangement appeared to be more logical.

7. Clause (*c*) or amended Clause (*b*) has been recast as follows "Lands owned in fee simple by Malabar Brahmins or their Devaswoms though not registered in the Ayacut accounts.

8. We have omitted the explanation and inserted the word "their" before "Devaswoms" in clause (*b*). The effect of this modification will be to exclude from the purview of clause (*b*) all Devaswoms other than those owned by Malabar Brahmins. We have no data to determine whether lands owned by such Devaswoms (*i. e.*, Devaswoms owned by other than Malabar Brahmins) are at present regarded as Jenmom lands. There are decided cases that such lands are not Jenmom lands.

9. In clause (*b*) or amended clause (*c*) we have omitted the words "petty chiefships" and "or Land Register of the State" as the expressions which precede them and of which they are meant to be explanatory call for no such elucidation. At the end of the clause we have added the words "such as Pooniat, Vadayatu and Vettiyatu." The addition is intended to indicate and circumscribe the scope of the clause. It was not without considerable doubt we have adopted this clause. We are aware that the decisions of our Courts for a long series of years have refused to recognise any one but a Malayali Brahmin as a Jenmy coming within the perview of the Royal Proclamation (*Vide* T. L. R. Vol. I page 2, Vol. VII page 93). The Jenmy and the Tenant Commission on the other hand, strongly advocate the view that the representatives of petty chiefs who once held sway over their respective petty states and who have hitherto been considering themselves in their relation with their Tenants Kanapattom in all

respects as Brahmaswom and Devaswom Jenmies, should be included within the purview of the law. We have included Pooniat, Vadayatu and Vettiyatu as coming within the above description. But even in their case, the matter is not free from difficulty. In the case of one of them, namely Vadayattu, the High Court has declined to recognise him as a Jenmy and allowed him to redeem his Kanapattom lease. The case in T. L. R. Vol. VII page 93 relates to Vadayattu. However, it is hoped that whatever might have been the doubtful nature of the relation between these chiefs and their Kudiyans hitherto, they (the chiefs and the Kudiyans) would not demur to their being brought within the scope of this Regulation.

10. (2). We have omitted the words "whether by hereditary descent .... own benefit" and "or pagodas" as the sub-section is clear enough without them. The addition at the end of the sub-section of the words "for the time being" is simply intended to remove all possible ambiguity.

11. (3). We have simplified the definition thus :—"Kudiyan means a person who holds land on Kanapattom tenure."

12. (4). We have also thoroughly recast the definition of the term "Kanapattom." We consider that the elaborate definition given in the Bill and the explanations added to it are unnecessary and that the simple definition we have substituted will answer the purpose. The definition as modified by us runs thus: "Kanapattom means a transfer of Jenmom land made or renewed by the Jenmy in consideration of Kanom and renewal fees, by whatever name such transfer is designated."

13. We have here added a new definition *viz.*, of the term "Kanom," and have in consequence changed the numbers of the subsequent clauses.

14. The addition of the words "of land" after the word "parcel" in clause 6 (amended clause 7) and the substitution of "under" for "from" before the words "a Kudiyan" in the next clause as also the modifications in clauses 8 and 9 (amended clauses 9 and 10) are merely verbal.

15. For clause 12 (or 13 of the amended Bill) we have with slight modification substituted the definition of "improvement" given in the Punjab Tenancy Act of 1887.

16. SECTION 4. We have omitted the word "proprietary" between the words "jenmom" and "right" as being supererogatory.

17. We have recast the proviso omitting the right of pre-emption.

18. As regards the right of pre-emption, we do not find any evidence of the existence of such right as an incident of Kanapattom tenure, and, while admitting the evil of dual ownership and the importance of removing it wherever possible, we are afraid that the creation of such right would hamper the action of Jenmies and produce other complications. We consider it therefore expedient not to disturb the existing relations between the Jenmy and the Kudiyan in this respect.

19. SECTION 5. We have, to make the object of the section quite clear, put in the word "permanent" before "occupancy." We have omitted the proviso as we have provided for the same in the new section at the end of the Bill.

20. SECTIONS 6 AND 7. We have omitted these two sections. Section 6 is unnecessary in the face of section 9 which makes commission of acts of waste ground for eviction. In regard to section 7, we consider that the right sought to be conferred by it is rather shadowy and the omission of the section is not likely to prove detrimental to the interests of the Jenmy.

21. SECTION 8. CLAUSE 2. We have substituted the words "within 6 months, from date of transfer" for the word "forthwith" as the latter word is indefinite or if literally taken would prove inconvenient to the transferee. We have also omitted the last 14 words of this clause as they are unnecessary.

In the penultimate line of clause 3, we have changed "or" into "and." This, we have no doubt, is what is intended and how it should be.

22. SECTION 9 (1). We have omitted the words "against his will," as the idea is contained in the word "evicted."

(*a*) For "a" before demand we have substituted the words "an express" to indicate the nature of the demand contemplated.

(*b*) We have omitted the words "persistent" "and customary" as the ideas which they are intended to

convey are already implied in the words which they respectively qualify. We have put in the words "six months" before the word "after" in the 2nd line, and the words "in writing" after the last word "demand."

These additions are necessary to render the sub-section definite and unambiguous.

We have added a proviso in the interests of Kudiyans who in the somewhat indefinite state of the existing law relating to forfeiture may not have fully realised the consequences of a refusal or neglect to pay renewal fees.

(*c*) We have omitted the last 7 words as they contain but a vague idea and have, in their place, put in the following "and persistence in such denial even at time of the first hearing of suit for eviction."

The object of the addition is to give the Kudiyan every reasonable opportunity to save his holding from forfeiture.

23. (2) We apprehend that the provision allowing the Jenmy to tender or deliver the notice or demand to the Kudiyan personally is objectionable and are of opinion that much unnecessary litigation may be avoided by making the Munsiff Court the only medium of serving such notice or demand. We consider that as a set off against the inconvenience which the Jenmies may experience in having to get every notice served through the Court, they should be relieved from the obligation of paying Court fees on applications presented by them requesting the service of such notice or demand. We have amended the sub-section accordingly.

24. SECTION (10). This section has been omitted, the same having been embodied in the definition of the term "improvement."

25. SECTION 11, (1). We have altogether recast this subsection. As pointed out by the High Court in their letter to the Dewan referred to in the 1st para of this report, the principle of assessing compensation for improvements enunciated in this subsection is opposed to existing usage and is not easily workable in practice. As in a matter like this so nearly affecting the interests

of the "Jenmies" and "Kudiyans" alike it is expedient to proceed upon lines which are well understood by them rather than on what may perhaps be considered just and proper on grounds of abstract theory, we have amended the section accordingly. We understand that, in some parts of the country, the compensation awarded to Kudiyans is less than $\frac{3}{4}$ths of the market value of trees and we have worded the section so as to obviate the hardship resulting from a disturbance of this arrangement.

26. (2). We fancy that as the rates contemplated being market rates will not be uniform throughout the country or for any length of time, a table of such rates, letting alone the difficulty of preparing it, may not meet the requirements fully and we deem it best to leave it to the Courts to determine the rates in each case. This sub-section has accordingly been expunged.

27. SECTION 12. We consider that the section as it stands is hard on the Jenmy who after having undergone all the trouble and expense of establishing a forfeiture in the Courts and obtaining a decree may not only be deprived of the benefit of his labours, but may also suffer considerably in the estimation of his Tenant. We have therefore recast the section (9 of the amended Bill) which, we are persuaded, will fully meet the requirements.

28. SECTION 13. This section, as pointed out in the statement of Objects and Reasons, is taken from the Bengal Tenancy Act (VIII of 1885) section 155. We would add as 2nd para, Clause 4 of the above section with a slight modification. The addition of course only expresses what is already implied in the section.

29. SECTION 15. The expression "reasonable notice" being vague, we have substituted "six months' notice in writing." We do not think that the term "renewal fees" correctly represents what is intended or at any rate what should be deducted from the Kanom. We have therefore substituted for it the words "Adukuvathu, arrears of Michavarom and other dues, if any."

30. We have also struck out the last 16 words of the 1st para of the section as we consider that "the equitable right of compensation" as observed by the High Court "accrues only at the time of compulsory ejectment and tenants are not to be

allowed to make costly improvements and claim compensation at the time of voluntary surrenders."

31. The modification in regard to "notice" we have made in the 1st para, renders the 2nd para unnecessary and we have accordingly omitted it. In its place, we have put in a new para declaring that the service of the notice under the section shall be effected through the Munsiff Court. The reasons given in para 23 apply to this addition also.

32. SECTION 16. This section is unnecessary. The right and liability referred to are already implied in the preceding section and an express declaration is not called for.

33. SECTION 18. This section is also unnecessary. Under the ordinary law it is only the right, title and interest of the Kudiyan that will be and can be sold in execution of a decree against him and section 17 gives the Michavarom and renewal fees due to the Jenmy a priority over all other charges excepting public revenue. We have, therefore, expunged the section.

34. SECTION 19 (*b*). As suggested by the High Court we have omitted the word "market" before "rate" and added after the latter word, the words "usually allowed to Kudiyans holding on Kanapattom in the same Proverthy." We need only quote the reasons given by the High Court for the modification and which fully meet with our concurrence, the market rate of interest on money invested on landed property differs from the rate of interest on money lent on simple bonds and the rate of interest on investment in land is not uniform throughout the State. Different rates prevail in different Proverthies and uniformity in this respect cannot be secured without inflicting injustice in particular cases.

35. In some of the petitions referred to at the head of this report it is said that it would be well to specify the rate of interest. We have no doubt that this would simplify matters, but in the absence of correct and sufficient data, especially in respect of paddy, we are unable to determine what the rate should be.

36. SECTION 20 (1). We have added a new clause (*f*) in consequence of a new section (24 A) we have put in (*Vide* para 45).

(2) (*a*) For the words "or in any other way most convenient to the parties," we would substitute "or which may be

agreed upon between the parties." The former words are indefinite and would lead to complication in practice.

(2) (*b*). After this clause we would add as clause 3, "Registering officers shall refuse to accept for registration any Kanapattom instrument unless it shall contain the particulars above set forth." This addition (which has been suggested by the High Court) is necessary to enforce clauses (1) and (2) of this section. We have also added a provision as to appeal from the orders of the Registrar.

37. SECTION 22 (*a*). The words "or net rent" after the word "Michavarom" have been scored out as the latter term has been defined and has a specific meaning in the Bill.

(*b*) In view of the nature of the dues and the occasions on or in connection with which they are generally payable, we deem it necessary and inconvenient to fix a period of time at or before which a demand should be made or to provide for any demand at all in reference to recognised occasions such as Onam. We have modified the clause accordingly. In the last para of the section we have altered the figures 9 and 12 before the words "per cent" into 12 and 18 respectively.

We consider the altered rates more equitable. The rates now obtaining appear to be 12 and 24 respectively.

38. SECTION 25 (3). We have substituted "Michavarom" for "Jenmy Pattom." Though both the terms are convertible, it is manifestly desirable to use the one which has been defined in the Bill.

(4) At present the cost of stamp and registration appears to be entirely borne by the Kudiyan. We consider it expedient to modify this practice only to the extent it is just and proper to do so in reference to the principle governing such cases that each party should bear the expense of documents which it is necessary for him to have in support of his title and for his security. We have modified the sub-section accordingly.

39. SECTION 26 (*b*). For clauses (1) and (2) of sub-section (*b*) we have substituted the following "That the current Pattom of the holding is lower than the Pattom assessable at the time of periodical renewal." We consider that this is more equitable and more easily workable in practice.

We have put in a new sub-section (*c*) to give the Jenmy right to a share of the additional rental value which the holding may acquire by erection thereon of factories, etc. We need hardly observe that the conversion of a holding into a site for shops or factories is strictly a departure from the use to which it was originally intended to be put, and it is equitable to give the Jenmy a portion of the benefits accruing from such conversions.

Proviso. The principle of adjustment of increased rents due to improvements made by the Kudiyan enunciated in proviso is a departure from the existing usage and appears to have been taken exception to by some Jenmies and Kudiyans. The proviso has therefore been modified in reference to such usage.

40. SECTION 27 (*a*). We consider that it would be simple and more convenient to all concerned to make the gross rather than the net produce the basis of calculation. Balancing all considerations we have reduced the proportion to $\frac{1}{4}$. We are convinced that the section as modified by us is both equitable and workable.

41. We may add that what with the law of diminishing return, the uncertainties and vicissitudes which cramp agriculture and the absence in the case of Kanapattom lands of any relief such as the remission of tax which Government accords to its ryots in bad seasons, the Kudiyan will find it difficult to bear his burden unless it is carefully adjusted in reference to his capacities. We may add that so far as the existing contracts are concerned, the proviso to clause (*c*) of this section sufficiently protects the interests of the Jenmies.

We have accordingly modified clause (*a*) and scored out the explanation which becomes obviously unnecessary.

42. (*b*) For taxable trees, we have substituted " fruit bearing trees or vines." There is no reason why Jenmies " claim " for rent or enhanced rent as the case may be, should be limited to trees which Government have selected for taxation. Neither equity nor existing usage justifies such restriction.

43. SECTION 29. In the first line we have inserted the words " at the time of renewal " between the words " may " and " claim " and in clause (*d*) the word " substantially " for the

word "considerably." These are intended to make the meaning of the section clear and definite.

44. SECTION 30. We have omitted this section as the provision contained therein relating to Thadastars is of doubtful expediency. Thadastars may if necessary be called and examined as witnesses before the Court and this requires no special provision.

45. Under section 4 and sub-section 2 of section (3) the transferee of a Jenmom right acquires all the rights of a Jenmy. The customary dues constitute one of the important items of a Jenmy's income and whatever may be their origin the right to receive them must now be regarded as a strictly proprietary right. But in view of the nature of the dues and of the occasions on which they are due and on other considerations we deem it expedient to give the Kudiyan the option of getting the dues commuted into fixed annual payments. We have accordingly put in a new section (24-A).

46. SECTIONS 32 & 33. In section 32 we have added a new clause the object of which is self-evident. In section 33 we have, to avoid uncertainty, added the words "specified in clause 3 of section 26"* after the word "dues."

* Amended Bill.

47. SECTION 35 (2). We have added the words "and return the deposit" after the words "reject the application" to make the procedure complete. We have also extended the period for making good the deficiency from 2 to 6 weeks, the former period being in our opinion too short.

48. (3) We have scored out the last clause beginning with "if an application" and ending with "other claimant." This clause is simply unnecessary as it is not stated what is to be done with the deposit if application is not made within the period prescribed. We have made the following addition to sub-sec. 3. "In case of dispute as to the person entitled to receive the deposit, the Munsiff may take security from the person in whose favour he adjudges in the summary investigation before making the payment."

The object of this addition is to safeguard the interest of rival claimants whose claims may not be fairly adjudged in a summary suit.

49. (4) Between the words "party" and "to" we have inserted "to contest the decision passed under clause 1 or." We consider this addition necessary to safeguard the interests of both Jenmies and Kudiyans. We have also added the word "paid" after the word "amount" to make the meaning clear.

50. SECTION 36. We have omitted all the words of the 1st para after the words "Court-fees" and also the whole of the 2nd para.

One of the chief objects of this Regulation being to minimise the inconvenience and expense to which the Jenmies are now put in recovering their rents and other dues from the Kudiyans we are of opinion that it would be just and expedient to exempt every application under section 31 from payment of Court-fees. The full fee being only half a rupee, the loss of revenue entailed will be inconsiderable.

51. SECTION 37. In ordinary cases the Munsiff has Small Cause jurisdiction only up to Rs. 30. We deem it expedient to make the above limit of summary jurisdiction of the Munsiff under this Regulation and have modified the section accordingly.

In the 2nd line we have substituted the words "non-appealable cases" for the words "small causes." The former is the technical and correct expression.

52. SECTION 38. (1) After the words suits in the 3rd line we have added the words "and proceedings." We have also omitted the last thirteen words and substituted the words "this Regulation." These modifications are necessary to make the section applicable to such proceedings as those taken under section 35.

We have expunged the proviso and also sub-section 2 as being quite unnecessary in the face of the corresponding provisions contained in the Civil Procedure Code.

53. SECTION 40. The partial exemption from payment of Court-fees contemplated in this section does not commend itself to us. The total exemption in respect of suits for the recovery

of arrears which accrued due within one year prior to their institution is justified by the considerations adverted to in para 50.

In all other cases we would levy the regular Court-fee. We have amended the section accordingly.

54. SECTION 41. We agree with the High Court in thinking that the privilege conferred by this section should be confined to the Jenmy. The corresponding section of the Bengal Tenancy Act limits the privilege to the 'Naik or Gumastah of a landlord.'

The section has been modified accordingly.

55. SECTION 42. For the words "Small Cause procedure" we have substituted "procedure applicable to non-appealable cases."

The modification is merely verbal.

We have also scored out all the words in the last two lines following the word "representatives." The words omitted are redundant.

56. SECTION 43. We have omitted the whole section. Clause (1) is clearly unnecessary as the general law will apply.

As regards clauses (2) and (3) we may observe that as the registers have been prepared by a Commission appointed under a Regulation the Courts may refer to them as ordinary works of reference. But as the registers only embody the results of a general enquiry we entertain doubts as to the expediency of referring to them in the Regulation itself.

57. SECTIONS 45, 46 & 47. In lieu of these sections we have adopted the following as recommended by the High Court. "The decision of Munsiffs and Zillah Judges passed in summary suits under this part shall be final, but shall be subject to revision by the High Court in the manner provided for by section 568 of the Civil Procedure Code."

We retain the proviso to section 47.

The section as above modified does not differ materially from the original sections, but is simpler and more precise.

58. We have added a new section. (Section 40 of the Amended Bill). The object is to exclude from the scope of this Bill all transactions between Jenmies and Tenants relating to

Kanapattom lease which are determinable and executed either in virtue of the Royal Proclamation, section 8, or for the first time after this Regulation comes into force under an understanding that such lease should be determinable.

59. We have now noticed all the important modifications we have made in the Bill. The rest are merely verbal.

60. We annex a copy of the Bill as amended and would recommend the same with this report being published in the Gazette at once.

61. Considering the importance of the measure and of the several amendments made, we would further recommend that the Bill as now settled be taken up for final consideration 3 months after the date of its publication in Malayalam.

K. Krishnaswamy Rao.
18th January, 1894. P. Thanu Pillay.
E. Rama Iyer.

THE JENMY AND TENANT BILL AS AMENDED BY THE SELECT COMMITTEE.

A Regulation to define clearly the relative rights of Jenmies and Tenants and to make provision for the speedy realisation of Michavarom and other proprietary dues from the Tenants.

Whereas it is expedient for better carrying out the intention of the Royal Proclamation of the 25th Karkadagom 1042, to define clearly the relative rights of Jenmies and Kudiyans in Travancore, to make further provision for the speedy realisation of Michavarom and other customary proprietary dues, and to invest the District Munsiffs and Zillah Judges with summary jurisdiction in petty claims for Michavarom and other dues—

We are, in supersession of the Royal Proclamation above recited, hereby pleased to enact as follows :—

CHAPTER I.

PRELIMINARY.

1. (1) This Regulation may be called the "Travancore Jenmy and Kudiyan Regulation of 106."

(2) It shall come into force throughout Travancore on

2. Nothing in this Regulation shall affect any custom or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by its provisions.

3. The following expressions shall have the meanings hereby assigned to them unless there is something repugnant in the subject or context.

(1) "Jenmom land" means—

(*a*) land recorded in the Ayacut accounts as Brahmaswon or Devaswom,

(*b*) lands owned in fee simple by Malabar Brahmins or their Devaswoms though not registered in the Ayacut accounts,

(*c*) revenue free land comprised in and forming part of Adhigaroms or Desoms administered by representatives of Edavakas or Swaroopums or of their pagodas and recorded in the Ayacut as Adhigara Olivu or Desa Olivu such as Pooniat, Vadayatu and Vetyatu.

(2) "Jenmy" means a person in whom the proprietary right over Jenmom lands is vested and includes, in the case of Devaswoms owning Jenmom lands, the managing Trustee or Trustees of the Institution for the time being.

(3) "Kudiyan" means a person who holds lands on Kanapattom tenure.

(4) "Kanapattom" means a transfer of Jenmom land made or renewed by the Jenmy in consideration of Kanom and of renewal fees by whatever name such transfer is designated.

(5) "Kanom" means the arthom or consideration (in money or in kind) paid at the date of the Kanapattom, and shall also include the value of improvements made by Kudiyans and treated at the date of the Kanapattom as Kanom.

(6) A person is said to "hold" land whether he retains it in his actual possession or whether he mortgages or sub-lets it; and a person shall be deemed to have held land if it has been held by himself or by a predecessor in interest or title through whom he claims.

(7) "Holding" means a parcel of land or parcels of land held under one Kanapattom instrument and one set of conditions.

(8) "Sub-tenant" means any person who holds land under a Kudiyan.

(9) "Michavarom" means the residual rent which is payable or deliverable annually under a Kanapattom lease by the "Kudiyan" to the "Jenmy" whether in money or in kind and includes services due in lieu of rent.

(10) "Renewal fees" means the fee or fees payable on renewal of Kanapattom leases under such denominations as Adukuvathu, Avakasom, Sakshi, Oppu Thusi, Olapanom, Thirumulkalcha, and the like.

(11) "Customary dues" means the cesses or contributions such as, Onakalcha, Allakkada, Thiroonal chumadu, Purannal chumadu, Vara koppu, Oolsava koppu and the like which are payable to the Jenmy by the Kudiyan on account of his holding according to contract or custom.

(12) "Duly registered" means registered in accordance with the law for the time being in force relating to the Registration of Assurances.

(13) "Improvement" means, with reference to a holding, any work which is suitable to the holding and consistent with the conditions on which it is based, by which the value of the holding has been and continues to be increased, and which, if not executed on the holding, is either executed directly for its benefit or is after execution, made directly beneficial to it.

Explanation I.—It includes among other things :—

(*a*) the construction of wells and other works for the storage or supply of water for agricultural purposes ;

(*b*) the construction of works for drainage and for protection against floods ;

(*c*) the planting of trees ;

(*d*) the reclaiming, enclosing, levelling and terracing of land for agricultural purposes and other works of a like nature ;

(e) the erection in Purayatoms or plantations of farm buildings; and

(f) the renewal or reconstruction of any of the foregoing works or such alterations thereon or additions thereto as are not of the nature of mere repair and as durably increase their value.

But it does not include such clearances, embankments, levellings, enclosures, temporary wells and water channels as are made by tenants in the ordinary course of cultivation and without any special expenditure or any other benefit accruing to land from the ordinary operations of husbandry.

Explanation II.—A work executed by a tenant is not an improvement if it substantially diminishes the value of any other part of his landlord's property.

CHAPTER II.

OF THE RIGHTS AND LIABILITIES OF JENMIES AND KUDIYANS.

4. Jenmies are at liberty to transfer by sale, gift or otherwise to whomsoever they like, whether Brahmins or non-Brahmins, the Jenmom right in the whole or any part of their Jenmom lands.

Provided that, if the Sirkar imposes or enhances the tax on the Jenmom lands transferred, such tax shall be borne by the transferee.

5. Subject to the provisions of this Regulation, every Kudiyan shall have a right of permanent occupancy in his holding and shall be exempt from liability to eviction save as laid down in section 7.

6. (1) The right of a Kudiyan in his holding shall be heritable and transferable; but every transfer shall be in writing and no transfer of a portion of the holding without the consent, in writing, of the Jenmy, shall affect the liability of the entire holding for Michavarom and other dues leviable by the Jenmy.

(2) When the transfer by sale or gift of a Kudiyan's entire holding in whole is made by the private act of the parties, or by

a public sale, the purchaser or donee as the case may be, shall make a written report of the transaction to the Jenmy within 6 months from date of transfer and the Jenmy shall, thereupon, recognise the purchaser or donee as his Kudiyan.

(3) When the transfer is only a portion of the holding, the transferrer or transferee shall seek the permission, in writing, of the Jenmy to the apportioning and fixing of the Kanom and Michavarom and customary dues on the portion to be transferred, and the Jenmy shall record such permission (*a*) if the market value of the holding transferred bears the same proportion to the amount of Kanom and Michavarom and customary dues reserved thereon as the market value of the entire holding bears to the entire Kanom and Michavarom and customary dues reserved in the lease, and (*b*) if the terms of the transfer seem otherwise fair and equitable.

7. (1) No Kudiyan shall be evicted from his holding or any portion of his holding except in execution of a decree of Court; and no Court shall make a decree for such eviction except for—

(*a*) non-payment of Michavarom for 12 years consecutively, notwithstanding an express demand in writing made at any time after the first year's arrears shall have accrued;

(*b*) neglect or refusal to pay renewal fees, and take a renewed lease within one year from the date on which such fees fall due and 6 months after the service upon him of a notice of demand in writing.

Provided that, when such neglect or refusal has taken place before this Regulation comes into force, it shall not confer on the Jenmy the right of eviction unless he proves that such neglect or refusal has been continued for a period of one year after this Regulation comes into force.

(*c*) wilful denial of Jenmy's title and persistence in such denial even at time of the first hearing of a suit for eviction.

Explanation.—A denial of Jenmy's title under a mistake of fact or of law is not wilful within the meaning of clause (*c*).

(*d*) intentional or wilful commission of such acts of waste as are calculated to materially and permanently impair the value and utility of the holding for purposes of tenancy, and to injure the interests of the Jenmy.

(2) The written demand or notice mentioned in this section shall be presented to the Court of the District Munsiff in whose local jurisdiction the holding is situated, and it shall be served by such Court on payment by the Jenmy of the prescribed process fees in the manner provided for the service of summons in the Code of Civil Procedure. But no Court-fees shall be levied on the application presented to the Court by the Jenmy requesting the service of such demand or notice.

(3) A suit for ejectment on the ground stated in clause (*d*) shall not be entertained unless the Jenmy has served a notice on the Kudiyan specifying the particular act of waste complained of and, when the waste is capable of remedy, requiring the Kudiyan to remedy the same and in any case to pay reasonable compensation for the waste, and the tenant has failed to comply within a reasonable time with that request.

(4) In case of eviction, the Kudiyan shall, in addition to a refund of the Kanom money, be entitled to be compensated for improvements made by him or by his predecessors in interest, for which compensation has not already been paid; and his sub-tenants, if any, shall also be entitled to such compensation in respect of improvements made by them.

Explanation.—Nothing in this section shall be constructed to bar the right of the Jenmy to recover the arrears of Michavarom and customary dues due at the date of eviction.

8. (1) The compensation to be awarded for items of improvement (*a*) (*b*) (*d*) (*e*) and (*f*) in clause 13 of section 3 shall be the estimated full cost of such improvements *minus* any deduction for wear and tear; and the compensation for item (*c*) shall be $\frac{3}{4}$ of the full market value of the trees other than wild trees of spontaneous growth, unless the Jenmy proves that, by local usage in respect of Jenmom lands, the compensation to be awarded to the tenant for trees is less than $\frac{3}{4}$.

(2) In awarding compensation for improvements, any reduction or remission of rent or any other advantage given by the Jenmy to the Kudiyan in consideration of the improvement shall be taken into consideration, and no compensation for an improvement shall be claimable when the Kudiyan has made the improvement in pursuance of a contract in writing binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

9. When the Kudiyan has incurred forfeiture for non-payment of Michavarom or renewal fees and the Jenmy sues to eject the Kudiyan, if, at the first hearing of the suit which shall not take place within 3 months from the date of the service of the original summons in the suit, the Kudiyan pays into the Court the Michavarom and other dues in arrears together with the interest thereon and the Jenmy's cost of the suit, the Court shall pass an order relieving the Kudiyan against forfeiture; and thereupon the Kudiyan shall hold the land as if the forfeiture had not occurred.

10. A decree passed in favour of the Jenmy, in any suit for ejectment of a Kudiyan on the ground that he has committed intentional and wilful acts of waste, shall declare the amount of compensation which would reasonably be payable to the Jenmy for the waste, and whether in the opinion of the Court the waste is capable of remedy, and shall fix a period during which it shall be open to the Defendant to pay the amount to the Plaintiff and, where the waste is declared to be capable of remedy, to remedy the same.

If the Defendant, within the period fixed by the Court under this section, pays the compensation mentioned in the decree and where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

11. In the absence of an express written contract to the contrary on the expiry of a period of twelve years from the date of every Kanapattom lease, and thenceforward at the end of every successive period of twelve years, it shall be obligatory on

the Jenmy to give and on the Kudiyan to accept a renewal of the lease save and except in the cases mentioned in the next following section.

12. A Kudiyan may, at the end of 12 years from the date of a Kanapattom lease or of its last renewal, surrender in writing his holding to the Jenmy after 6 months' notice in writing, and claim refund of the Kanom *minus* the Adukuvathu and arrears of Michavarom and of other dues, if any.

Notice under this section shall be served through the Munsiff Court in the manner provided in section 7.

13. The holding of a Kudiyan shall be deemed to be hypothecated for the Michavarom and renewal fees as they fall due, and these shall take priority over all other charges except public land revenue due on it.

14. Subject to the limitations and conditions prescribed in Chap. III, every Jenmy may, at the time of periodical renewals of Kanapattom leases, enhance the Michavarom payable by a Kudiyan,

(1) (*a*) by increasing the pattom assessment on the land,

(*b*) by reducing the rate of interest allowed to the Kudiyan on the Kanom money, if such rate is in excess of the rate usually allowed to Kudiyans holding on Kanapattom in the same Proverthy.

(*c*) by both the modes (*a*) and (*b*); or

(2) where the Jenmy has hitherto been levying additional Kanom (or Ettartham) in lieu of enhancing the Michavarom, he may continue to do so at the customary period.

Provided that no Jenmy shall without the consent of the Kudiyan be entitled to enhance the Michavarom and levy Ettartham at one and the same time.

CHAPTER III.

PART A.

OF MICHAVAROM AND CUSTOMARY DUES,

15. (1) In every contract of Kanapattom lease granted or renewed after this Regulation comes into force,

(*a*) the name, description and extent of the holding,

(b) the Pattom assessed on the holding,

(c) the deductions therefrom on account of interest on the Kanom money,

(d) the amount of Michavarom agreed upon,

(e) the renewal fees and customary dues intended to be levied from the Kudiyan, and the rate at which and the occasions on which they are to be levied, and

(f) if customary dues are commuted under section 24-A, the amount so commuted,

shall be distinctly specified.

(2) (a) If the Michavaram or other dues are made payable in kind, it shall be specified according to the standard measure or parah prescribed by Our Government or which may be agreed upon between the parties,

(b) if any local parah or measure is used by the parties, the difference between it and the Government standard parah must be set forth in the Kanapattom lease,

(3) registering officers shall refuse to accept for registration any Kanapattom instrument unless it shall contain the particulars above set forth. The order of the Registrar shall be subject to appeal according to the provisions of the Registration Regulation for the time being in force.

16. No summary suit or claim for enforcing payment of renewal fees or customary dues shall be entertained by the Courts under this Regulation, unless such fees or dues, as the case may be, are specified in the Kanapattom lease or its counterpart duly registered.

Exception.—Nothing in this section shall affect the Jenmy's right to recover summarily the renewal fees or customary dues under the existing Kanapattom leases, though not expressly specified in the instrument of Kanapattom lease.

17. Every Kudiyan shall pay his Jenmy the Michavarom renewal fees and customary dues at such time and place as may be agreed upon between them in writing and, in the absence of such written agreement, in the manner following, namely,

(a) the annual Michavarom shall be paid on or before the 30th day of Adi of each Malabar year at the residence

(Illom, Mana, or Matom) or at the granary (Sekarippoo) of the Jenmy provided that such residence or Sekarippoo is within the Proverthy in which the "holding" is situated.

(*b*) customary dues after demand except in cases where they become due on recognised dates such as Onakalchai.

(*c*) renewal fees on or before the last day of the year following the period when the renewal of the lease ought to take place under section 11.

In default of such payment interest shall be charged on the arrears from the date they become due, at the rate of 12 per cent. per annum when the arrears are payable in money, and of 18 per cent. per annum when the arrears are payable in kind.

18. On payment by the Kudiyan of the renewal fees together with any arrears of Michavarom which may remain unpaid for the whole or any portion of the expired period of 12 years, the Jenmy shall renew the lease and the Kudiyan shall thereupon execute a counterpart of such lease :

Provided that when a Kanapattom lease and its counterpart containing the particulars specified in section 20 and duly registered shall have been once before exchanged between a Jenmy and his Kudiyan, the parties may by mutual agreement dispense with the execution of a fresh lease and counterpart. In such cases a receipt for payment of renewal fees shall, if duly registered, be deemed to operate to all intents and purposes as a renewal of the lease.

19. Every Kudiyan paying Michavarom or customary dues shall be entitled to a receipt specifying

(*a*) the date of payment,

(*b*) the amount paid,

(*c*) the period for which it is paid,

(*d*) the holding in respect of which it is paid, and

(*e*) such other particulars as may be necessary to elucidate the transaction.

20. (1) Every revision or re-adjustment of the terms of a Kanapattom lease at the end of 12 years shall be made by a contract in writing duly registered.

(2) If the parties cannot agree as to the terms of such revision or re-adjustment or as to the amount of additional Kanom or Ettartham, the Jenmy or the Kudiyan, as the case may be, may institute a regular suit in a Civil Court of competent jurisdiction for the purpose of compelling the other party to accept the terms proposed by him, or such other terms as to the Court may seem fit.

(3) Notwithstanding anything contained in the Stamp Regulation, no such contract of Kanapattom executed in renewal of a prior contract of lease shall be subject to stamp duty when the annual Michavarom reserved in such renewed lease does not exceed Rs. 50 in value.

(4) In the absence of an express contract to the contrary, the cost of stamp and registration of Kanom deeds shall be borne by the Kudiyan and the cost of stamp and registration of counterparts or Kychits by the Jenmy.

21. The Jenmy of a holding shall not be entitled to claim an enhancement of the Pattom assessment fixed under any existing lease except on one or more of the following grounds, *viz.*,

(*a*) In the case of paddy lands :—

(1) that the area of the holding actually under cultivation is in excess of the area on which the Pattom was previously fixed.

(2) that the rate of current Pattom is below the prevailing rate for lands of a similar description and quality, with similar advantages in the same Elai or Muri and that there is no reason for the holding being assessed at so low a rate.

(3) that the productive powers of the land comprised in the holding as compared with those powers at the time when the current Pattom was fixed, have increased from causes not merely temporary or casual.

(*b*) In the case of garden lands, in addition to the foregoing grounds :—

(4) that the current Pattom of the holding is lower than the Pattom assessable at the time of periodical renewal.

(*c*) In the case of either description of land :—

(5) that, after this Regulation comes into force, the tenant erects factories, shops or other buildings not being dwelling houses or improvements and the annual rental value of the holding has thereby increased.

When the excess to the area under cultivation or the increase in the productive powers of the land is due to reclamation or other works of permanent improvement effected at the expense of the Kudiyan, the cost of such reclamation or other works of improvement shall be estimated and interest on the capital outlay so estimated shall be deducted from the difference between the old and new assessment and allowed to the Kudiyan at the same rate at which the interest on the Kanom money is allowed to the Kudiyan under the Kanappattom lease.

Where an enhancement is claimed on garden lands, Nadavukoor or deductions on account of the cost of planting and rearing the trees sought to be assessed with the Pattom, shall be allowed to the Kudiyan at such rate as may have been agreed upon between him and the Jenmy, and in the absence of such agreement, at the usual rate prevailing in the Proverthy in which the land is situated.

When enhancement is claimed on the ground mentioned in clause (5) the Pattom shall be the difference between the annual rental of the building according to the rates prevailing in the neighbourhood and the interest at 6 per cent. per annum on the value of such building.

22. (*a*) The assessment by Courts of Pattom on paddy lands shall not exceed one-fourth of the gross produce.

(*b*) The assessment by Courts of Pattom on Purayatoms or plantations shall, in like manner, not exceed one-fourth of the estimated average annual yield of the fruit-bearing trees or vines growing thereon, commuted into money at the average market rate, the average being based upon the market price of the different kinds of staple produce for 12 years preceding. If no such trees exist the Pattom shall be assessed on the land at the Payattupattom rate prevailing in the Proverthy.

(*c*) The Pattom so assessed on paddy lands and plantations shall be subject to deduction on account of interest on the Kanom

money but not on account of existing Sircar tax or customary dues and renewal fees which shall be paid by the Kudiyan out of his share of the produce. The portion of the Pattom (assessed on buildings mentioned in clause (5) of the preceding section under para 3 of the proviso) payable to the Jenmy shall be one-half of such Pattom.

Provided that nothing in this section shall entitle a Kudiyan to an abatement of Michavarom under the existing lease merely on the ground that the amount of Pattom therein fixed by mutual contract exceeds the Pattom assessable under this section.

Provided further that, notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is, under the circumstances of the case, unfair or inequitable.

23. The amount of additional Kanom or Ettartham leviable by the Jenmy at the time of renewal of Kanapattom leases, when such is leviable under the provisions of this Regulation, shall not without the consent of the Kudiyan exceed six times the amount of the enhanced Michavarom which would have been payable by the Kudiyan, had the Jenmy claimed such enhancement under the provisions of sections 20 and 21.

24. A Kudiyan may at the time of renewal claim reduction of Pattom on the grounds—

(*a*) that the area of his holding has been diminished by the action of sea, river or lake or otherwise, not due to his neglect,

(*b*) that the soil of the holding has, without the fault or neglect of the Kudiyan, become permanently deteriorated,

(*c*) that in the case of gardens there has been a fall in the average local prices of the produce of the trees in the holding during the currency of the current Pattom,

(*d*) that the number of fruit-bearing trees in the holding has substantially diminished by causes not preventible by the Kudiyan.

24-A. In the case of a transfer of Jenmom right it shall be competent to the Kudiyan to call upon the transferee to commute

customary dues into fixed annual payment. The transferee shall comply with such demand. If they disagree as to the rate of commutation, the Court shall decide what shall be the fair and equitable rate.

PART B. DEPOSIT OF RENT AND CUSTOMARY DUES IN COURT.

25. If any Kudiyan tenders to the Jenmy full payment of Michavarom or renewal fees or other dues as they fall due, and if the Jenmy is not ready or willing to accept the tender and grant a receipt forthwith, or if the Kudiyan entertain a *bona fide* doubt as to the party entitled to receive the Michavarom and other dues, the Kudiyan may apply to the Munsiff's Court, within whose jurisdiction the holding is situated, for leave to deposit such amount in Court to the credit of the Jenmy.

26. The application shall specify, as far as possible,

(*a*) the name of the Jenmy and his description when known; and, in case of doubt, the name and description of all the rival claimants,

(*b*) the local name, description and extent of the holding,

(*c*) the particulars of the tenure on which the holding is held by the Kudiyan,

(*d*) the full amount of Michavarom or customary dues due up to date, and

(*e*) the circumstances under which the application is made; and shall be verified in the manner prescribed by the Code of Civil Procedure for the verification of plaints.

27. The amount of Michavarom or other dues specified in clause (*e*) of section 26 shall be paid into Court at the time of the application, the price of grain or other commodities payable as Michavarom or dues being commuted into money at market rates.

28. The Munsiff shall, upon such payment as aforesaid, issue a notice to the Jenmy or other persons named in the application mentioned in section 26 calling upon him or them to show cause why the payment should not be accepted and a receipt granted to the Kudiyan.

29. (1) On the day fixed for the appearance of the parties or on any other day to which the hearing of the application may be

adjourned, the Munsiff shall hear the objections, if any, of the Jenmy or other parties claiming the right to receive the Michavarom and dues, and on being satisfied that the full amount due up to date has been paid into Court by the Kudiyan and that the Kudiyan is entitled to make the application, shall grant a receipt in the form prescribed by section 19.

(2) If the amount paid into Court be less than what is justly due to the Jenmy at the date of the application, the Munsiff shall reject the application and return the deposit unless the Kudiyan offers to make good, and does make good the deficiency within 6 weeks.

(3) In all cases where a receipt is granted by the Court, the deposit shall be paid over to the Jenmy or other party appearing on a summary investigation to be entitled to the deposit. In cases of dispute as to the person entitled to receive the deposit, the Munsiff may take security from the person in whose favour he adjudges in the summary investigation before making the payment.

(4) Nothing in this section shall affect the right of any party to contest the decision passed under clause (1) or to recover the amount paid by a regular suit from the party receiving the deposit under the summary order of the Court.

(5) A receipt granted by a Court under clause (1) shall operate as a full acquittance of the amount paid into Court and shall have the same force and effect as a receipt granted by the Jenmy himself.

30. Every application made under section 25 shall be exempt from payment of Court fees.

PART C. OF THE JURISDICTION OF COURTS OVER PETTY CLAIMS FOR MICHAVAROM AND CUSTOMARY DUES.

31. Claims by Jenmies for recovery of arrears of Michavarom, renewal fees or customary dues shall, when the amount or value of such claim does not exceed Rs. 100, be taken cognizance of, and disposed of summarily by, the Courts hereinafter mentioned.

(1) District Munsiffs shall have jurisdiction in respect of all such claims where the amount or value of the claim does not exceed Rs. 30.

(2) Zillah Judges shall have similar jurisdiction where the amount or value of the claim exceeds Rs. 30 but does not exceed Rs. 100.

32. (1) Except as otherwise provided by this Regulation, the procedure prescribed by any law for the time being in force for the trial of non-appealable cases shall be the procedure to be followed by the District Munsiffs and Zillah Judges in all suits and proceedings summarily cognizable by them under this Regulation.

33. The cause of action for recovery of such claims shall be deemed to have arisen at the place where the holding in respect of which the claim accrued is situated and the suit shall, subject to the provisions of section 31, clauses 1 and 2, be preferred to the Court within the limits of whose territorial jurisdiction the cause of action shall have arisen as aforesaid.

34. The plaint in such suits shall be exempt from payment of Court-fees, if the claim be for recovery of arrears which accrued due within 12 months next preceding its institution. If otherwise, the regular Court-fee which would have been levied had the claim been instituted as a regular suit in a competent Court, shall be levied on the plaint.

35. Any agent or Vicharippukaren of a Jenmy duly empowered in this behalf by a written authority under the hand of the Jenmy shall, for the purposes of a summary suit or application under this Regulation, be deemed to be a recognised agent of the Jenmy within the meaning of the Code of Civil Procedure, notwithstanding that the Jenmy may reside within the local limits of the jurisdiction of the Court in which the suit is to be instituted or is pending or in which the application is made.

36. If, in the decision of a suit cognizable summarily by a Munsiff or a Zillah Judge under section 37, it becomes necessary to decide incidentally any matter in dispute between the parties to the suit, concerning title to immoveable property or the status of either of them or of those under whom they claim, which, if it had been the immediate subject matter of the claim, would not be cognizable by the Munsiff or the Zillah Judge under the procedure applicable to non-appealable cases, it shall be competent

to the District Munsiff or the Zillah Judge, as the case may be, to decide such question of title to immoveable property or status, so far as it may be necessary to do for the determination of the summary suit; but such decision shall not be conclusive evidence of such title or status in any other action between the same parties or their representatives.

37. (1) When a Kudiyan—Defendant admits that money is due from him on account of Michavarom or renewal fees or customary dues but pleads that it is due not to the plaintiff, but to a third person, the Court shall, except for special reasons to be recorded in writing, refuse to take cognizance of the plea, unless the defendant pays into Court the amount so admitted to be due.

(2) When such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person within 3 months of the notice institutes a regular suit against the plaintiff and therein obtains an order restraining payment of the money, it shall be paid out to the plaintiff on his application.

(4) Nothing in this section shall affect the right of any person to recover from Plaintiff the money paid to him under sub-section (3).

38. The decision of Munsiffs and Zillah Judges passed in summary suits under this part shall be final but shall be subject to revision by the High Court in the manner provided for by section 568 of the Civil Procedure Regulation.

Provided that, no judgment, decree or order in supersession of the decision or order of the subordinate Court, shall be passed by the High Court without giving the parties an opportunity of stating their case either personally or by vakils.

39. The High Court may, from time to time, make rules consistent with this Regulation for regulating the practice and procedure of Courts acting under this Regulation. The rules so made shall be published in the Gazette.

40. Notwithstanding anything contained in the foregoing, the provisions of this Regulation shall not apply to any transaction under determinable Kanapattom leases executed for the

first time since the 25th day of Karkadagom 1042 in conformity with section 8 of the Royal Proclamation of the said date or to such determinable Kanapattom leases entered into for the first time after this Regulation comes into force.

Explanation.—In contracts relating to Jenmom lands entered into for the first time after this Regulation comes into force, the question whether a Kanapattom lease is determinable or otherwise shall be determined according to the intention of the parties as gathered from the terms of the contract.

APPENDIX D.

PROCEEDINGS OF THE TRAVANCORE LEGISLATIVE COUNCIL.

An extraordinary meeting of the Council was held in the Dewan's room, Public Offices, at 12 noon on Wednesday, the 12th December, 1894, to consider the Jenmi and Tenant Bill.

PRESENT :

The Dewan ... ... *Presiding.*

M. R. Ry. K. Krishnaswamy Rao Avergal.

Mr. F. Watts.

M. R. Ry. Nagam Iyer Avergal.

M. R. Ry. Rama Varma Avergal, Raja of Perapanad.

M. R. Ry. Ramanatha Rao Avergal.

M. R. Ry. A. M. Muthunayagom Pillay Avergal.

PAPERS CIRCULATED.

The Secretary presented the following papers. As copies were previously furnished to the members, they were taken as read.

1. Mr. Ramanatha Rao's amendments to the Jenmi and Tenant Bill.
2. Mr. Nagam Iyer's Do. do.
3. Mr. Muthunayagom Pillay's Do. do.

4. Petition from Mathai Ousep of Poonjat protesting against the provisions of the Jenmi and Tenant Bill being applied to the Poonjat Edavagay.

5. Petition from the inhabitants of Alengad suggesting amendments to the Jenmi and Tenant Bill.

6. Petition from Kanakku Govindan of Edacherry, Mavalikaray, about the treatment of the Vettiyatt Edavagay lands.

7. A proposed definition of the term 'jenmom lands'

Mr. Muthunayagom Pillay moved that in the Preamble to the Bill the words 'referred to' be substituted for 'recited'

Mr. Watts seconded the motion.

Carried.

Mr. Watts moved that, in lieu of the definition of 'jenmom land' put forward as tentative, and published with the proceedings of the meeting of the 14th August last, the following definition be adopted. " 'Jenmom land' means land which possesses all and every one of the following characteristics :—

(*a*) That it does not fall under the class of Pandaravagay (including Nayar Viruthyor Service Inam), Sreepandaravagay, Kandukrishi, Sircar Devaswom Lands recognised as such in the accounts.

(*b*) That it is either entirely exempt from Government-tax, or if assessed to public revenue, is subject only to Rajabhogom.

(*c*) That though its entry in the Thandapare may be in the name of the actual tax-payer, such entry contains specific reference to the original proprietor also.

(*d*) The occupancy right over the land is created for a money consideration and is subject to the conditions (1) of paying a residual rent or Michavarom and customary dues or Avakasoms and (2) of periodical renewal of the right on payment of renewal fees."

In seconding the motion, Mr. Krishnaswamy Rao, said :—

"From the Memorandum of Rajah Sir. T. Madhava Rao, drawn up before the issue of the Royal Proclamation dated 25th Karkadagam 1042, I gather that he intended to bring the Non-Brahmin Jenmies within the scope of the Proclamation. The absence in the Proclamation of the definition of the word "Jenmi," the generally accepted meaning of this word, *viz.*, the Numboori landlord, and the principle of law that all statutes which interfere with the freedom of contract, should be literally construed, led the Courts to interpret the word "Jenmi" in the Proclamation as Malayali Brahmin Jenmies. It is open to the legislature to remove the ambiguity in the Proclamation by a definition of the word "Jenmom," so as to give effect to the intention of the

framer of the said Proclamation. The non-Brahmin Jenmies had ample time to express their views on the proposal to bring them under the proposed law. With the exception of two, the non-Brahmin Jenmies have not protested against the proposal. I have no doubt that the Council will allow such further provisions to be made, as would effectually protect vested interests, and remove any hardship that the application of the proposed law in its present form to leases executed since 1042, might create."

The Rajah of Perapanad observed :—

"I doubt the wisdom of disturbing, by the extension of the scope of the Jenmi and Tenant Bill, the judicial decisions of our Courts which have so long held that none but Malayalee Jenmies and their Devaswams would come within the scope of the Royal Proclamation.

The Royal Proclamation itself, as I said in my Memorandum dated 15th June 1890, has been strongly objected to, being an unnecessary State interference with the vested rights of the Jenmies. This Proclamation, not called for by any such emergency as would justify such a violent measure as it is, has already shaken to the very foundation the sense of security in this State so far as property in land is concerned. The Jenmies in Cochin and Malabar stood as such on equal footing with the Jenmies in Travancore. Why did no one ever think seriously there to introduce some such measure as our Royal Proclamation? For the simple reason that there the Jenmies would not so easily submit to it as here. Mr. Logan a Collector of Malabar, once ventured to entertain the idea of taking away by a Legislative Act the powers of the Malabar Jenmies to redeem from their tenants, lands held under Kanapattom. He sketched out an elaborate scheme to effect his long-cherished desire, but finding that the Madras Government and the Judges of the Madras High Court whom that Government consulted on the subject were strongly against his scheme to deprive the Malabar Jenmies of their just and lawful right to make such use of their lands as they please, gave up the idea of carrying his scheme into effect. A man digs up a diamond buried in earth, takes it to

jeweller's shop and there gets it cut and polished. Has he not the exclusive right and power to dispose of in regard to this diamond? In the same way, a man finds and takes first possession of a land till then lying waste. He spends some money and improves it. I do not understand why there should be any difference between the right to dispose of in regard to the diamond on the one side and the land on the other side. That land is a limited quantity, but some portion of it is an indispensable requisite to each and every member of the community. This and some such other reasons justifying violent land legislations can have no force in a country where there are waste lands to be found and appropriated. Nationalization of the land equal distribution of property are too advanced questions of political economy for us to discuss at the stage of our progress. However the Proclamation has been in force for more than a quarter of a century and other classes of vested interests have also sprung up. Now to repeal the Royal Proclamation is to assail the sense of security a second time which we should avoid doing. For the same reason, we should not disturb the judicial decisions based on which have come into existence new interests. I am strongly against the extension of the scope of the Bill. There must be some distinctions between the Brahmin and other Jenmies, for the reason that Brahmin Jenmies have their Jenmom lands free of all taxation. This is a special privilege to our Jenmies in distinction to this class in Malabar for which they must make some sacrifice. They may be asked to surrender their rights to redeem their lands from their Kanom tenants in consideration of the advantages they enjoy. The impression that Kanapattom tenure was once permanent in Travancore is entirely baseless. It may be true that in the old days Jenmies rarely evicted their Kanamdars. I am not prepared to admit that the simple Kanamdar's rights would ripen into a permanent right by long possession. I must tell you the truth—the Royal Proclamation and the Bill we are now considering have been considered by the majority of the population as a measure intended to benefit a favoured class (the Kanamdars). It does much harm to the Jenmies but no good to the actual cultivators who improve the lands at their expense and labour. The great majority of the Kanamdars have simply invested

their money on the security of the lands. It is the actual cultivators who now stand in need of our support."

Mr. Muthunayagom Pillay observed as follows :—

"The Royal Proclamation of Karkadagom 1042 did not define the word "Jenmi"; but the Courts being left to determine the meaning of the term have held that Brahmins alone are the Jenmies to whom the Proclamation applies. A perusal of the able memorandum of Sir T. Madhava Rao on the vexed question of the Kanapattom tenure of Travancore shows that he perhaps intended to render irredeemable all Kanapattoms then existing; but the distinction between the two classes of Jenmies does not seem to have been present to his mind.

"The Jenmi and Tenant commission has recommended the expressed inclusion in the definition of the term 'Jenmi' of certain non-Brahmins only, namely, those who are representatives of Edavagays or Swaroopams (petty Chiefships). The Legislative Council of 1069, however, seems to have resolved by an overwhelming majority that no distinction of any kind should be made between Kanapattoms granted by the Brahmins and the non-Brahmin proprietors of Jenmom lands. Though it may be gathered from the above that the concensus of recent opinion is that the narrow interpretation of the Proclamation adopted by the Courts is undesirable, the question still remains how far the legislature may safely proceed in extending the operation of the Proclamation.

"While I do not go the length to which my learned friend, the Rajah of Perapanad, seems inclined to do I would not go to the other extreme either and say that all non-Brahmin proprietors of Jenmom lands, should be pulled down to the level of the Brahmin Jenmi. My position is that such of the non-Brahmin proprietors alone should be regarded as Jenmies as have hitherto been conducting themselves in their relations with their Kanapattom tenants in all respects as the Brahmin Jenmies."

The Council adjourned to the following day:

The Council met again in the Dewan's room, Public Offices, at 12 noon on Thursday, the 13th December, 1894.

PRESENT:

The Dewan ... ... *Presiding.*

M. R. Ry. K. Krishnaswamy Rao Avergal.

Mr. F. Watts.

M. R. Ry. V. Nagam Iyer Avergal.

M. R. Ry. P. Thanu Pillay Avergal.

M. R. Ry. Rama Varma Avergal, Rajah of Perapanad.

M. R. Ry. Ramanatha Rao Avergal.

M. R. Ry. A. M. Muthunayagom Pillay Avergal.

The discussion of the definition of 'Jenmom land' was resumed. As the result of considerable discussion, the following revised definition was adopted by majority. "Jenmom land" means land (other than Pandaravagy, Sreepandaravagy Kandu Krishi or Sircar Devaswom land recognised as such in the Sircar accounts) which is either entirely exempt from Government tax, or, if assessed to public revenue, is subject to Rajabhogam only and the occupancy right in which is created for a money consideration (Kanom), and is also subject to the payment of Michavarom or customary dues and periodical renewal of the right, on payment of renewal fees.

Explanation.—Rajabhogam includes Rajabhogam paid to a chief within whose free-hold estate the land is situate."

Mr. Krishnaswamy Rao moved that in the clause (4) of section 3, the word 'demise' be substituted for 'transfer' and the words 'by whatever name such demise is designated' for 'in consideration of Kanom and of renewal fees by whatever name such transfer is designated.'

Mr. Thanu Pillay seconded the motion.

Carried.

Mr. Muthunayagom Pillay moved that in clause (5) of sec. 3, the word 'for' be substituted for 'at the date of' and 'as arthom or consideration' for 'at the date of the Kanapattom as Kanom.'

Mr. Watts, seconded the motion.

Carried.

Mr. Watts moved that the word 'Pauttom' be defined as follows:—

(9) "'Pauttom' means the assessed rent of the holding prior to the deduction of interest due to the Kudiyan on the Kanom, in order to determine the Michavarom due to the Jenmi."

Mr. Nagam Iyer seconded the motion.

Carried.

Mr. Nagam Iyer said:—"According to notice given, I propose that in section 3, clause 13, explanation I (*a*), the words 'or domestic' be added after the word 'agricultural' and before the word 'purposes.' The storage or supply of water for 'domestic' purposes is as much an improvement to the holding as that for agricultural purposes. Drinking water-wells in a Kanapattom property will considerably enhance its value. So I have no doubt in proposing, that this be added to the clause."

Mr. Thanu Pillay seconded the motion.

Carried.

The Raja of Perapanad moved that in Explanation I (*c*) of clause 13 of section 3, the words "and the protection or maintenance of such trees, the same having grown spontaneously during the tenancy" be added after 'trees.' He said:—

"My reason for moving this amendment is that society will, in the long run, be a loser, as no tenant is likely to care to protect and maintain trees grown spontaneously, unless he is to be rewarded for his labours."

Mr. Nagam Iyer seconded the motion.

On being put to the vote, the Council were equally divided in opinion and the motion was lost by the President's vote.

Mr. Nagam Iyer said:—"I propose that in section 3, cl. 13, Explanation I (*e*), the following words be added 'of dwelling houses, cattle-sheds or other structures, permanent walls or strong fences which are not of a temporary nature' after the words 'farm buildings.' The term 'farm buildings' does not include these, which are all improvements that go to enhance the value of a holding and should therefore be covered by the definition of the word 'Improvement.' These will have cost the

tenant considerable labour and money and he is entitled to the value thereof when evicted. It would be a great hardship to the tenant to be told that such structures are excluded from the definition. I therefore commend it to the careful consideration of the Council."

Mr. Watts seconded the motion.

In opposing the motion, Mr. Krishnaswamy Rao said :—

" Under the law as it now stands, buildings are treated differently from plantations and purely agricultural improvements. In the case of the latter, the Jenmi is bound to pay the value and take the improvements, but in the case of buildings, the tenant has the option of removing them. The rulings as to the right of the Kudiyan to claim the value of buildings are not uniform. Local usages serve now as a guide in this matter. Where the value of buildings is allowed, it is the full value in its existing condition, not three-fourths or halves as in the case of other improvements. The claim for the value of buildings, is now made to depend upon the view the Court takes, as to their being suitable to the holding, and consistent with the conditions on which the holding was let. The tenant could not at the time of erecting the buildings foresee what the Court would think of this kind of work. His chances of getting the value of buildings will be in the inverse ratio to the cost he may incur. Even to him, the proposed amendment is of doubtful utility. Usage seems to me to be the best rule in this respect."

The Rajah of Perapanad objected to costly dwelling-houses being included in improvements, entitling the kanamdar, at the time of eviction to be compensated.

On the motion being put to the vote, it was carried by a majority.

Mr. Muthunayagom Pillay moved that in the place of section 4, the following be substituted.

"When a Jenmi transfers by sale, gift or otherwise the Jenmom right in the whole or any part of his Jenmom lands and the Sircar imposes or enhances the tax on the Jenmom lands transferred, such tax shall be borne by the transferee."

Mr. Ramanatha Rao seconded the motion.

Carried.

Mr. Krishnaswamy Rao moved the following addition, as second para to section 5: "In the absence of an express contract, nothing in this section shall be taken to confer the right of permanent occupancy on the Kudiyan of a non-Malayalee Brahmin Jenmi unless he or his predecessors in interest or both have uninterruptedly held the holding for a period of not less than 25 years.

"The provisions of para 2 do not apply to assignees of Malayalee Brahmin Jenmies." He said :—

"The last para of the Royal Proclamation of 1042 saved the right of the Jenmies to grant fresh leases of a revocable character. As, according to the decisions of the Courts, non-Brahmin Jenmies were not governed by the Proclamation, they could not be expected to have borne in mind the special provisions of the last para of the Proclamation, in granting fresh leases. To make all the leases granted by them since 1042, irrespective of their terms, irrevocable (which will be the effect of this section) would be to place them under greater disadvantages than those under which the Brahmin Jenmies are. Where the lease granted confers the right of permanent occupancy, there will be no difficulty whatever. But if the lease is silent as to its duration it will be unjust to find fault with the non-Brahmin Jenmi for not availing himself of the provisions of the last para of the Royal Proclamation which, according to the rulings of the Courts, did not apply to him. Unless there were at least two renewals of the lease, it would be unreasonable to say that the non-Bramhin Jenmi intended to make the grant a perpetual one. The shortest period of two renewals may be taken to be 25 years. In cases where a tenant has been allowed to hold possession continually for 25 years, we may have very good ground to presume that the Jenmi intended to create a permanent tenancy."

Mr. Muthunayagom Pillay seconded the motion. He said :—

"I need hardly say that there are Jenmies and Jenmies. My friend Mr. E. Ramaiyer pointed out to the last Council that it

appears from the Sircar accounts that while there are non-Brahmin Jenmies owning more than two thousand parahs of land, there are others who hold but two compounds. It will not be denied that some at least of these Jenmies have long enjoyed the right of ousting their tenants. The deprivation indiscriminately, of the inherent right of these owners of property of dealing with their possessions as they like, would work a serious hardship on the poor Jenmies who never contemplated the creation of an irrevocable tenure when they first demised their lands. One of the grounds on which Sir T. Madhava Rao justified the enactment of 1042, was that the Jenmi was a person "devoted to religious duties and otherwise unfit to carry on agricultural operations." I ask, can the non-Brahmin Jenmi be said to belong to a non-cultivating class and especially can the poor non-Brahmin Jenmi with but "two compounds" be said to be unfit to carry on agricultural operations. Evidently, Sir Madhava Rao had in mind the Brahmin Jenmi only when he wrote as above. The reason that applies to the Brahmin Jenmi does not hold in the case of all the non-Brahmins. Why then should a Kanapattom demise made by the latter be deemed irredeemable simply because he happens to be the holder of lands which are classed as Jenmom in the accounts. It might be urged by the other side, that a non-Brahmin Jenmi should have or might have provided expressly for redemption in his deeds of Kanapattom, if he ever intended to redeem, and having failed to do so, the presumption of irrevocability that fails in the case of the Brahmin Jenmi should equally hold in the case of the non-Brahmin. This contention is untenable, whether we apply it to the Kanapattoms created before the Proclamation of 1042 or after. For before 1042 (when the law took away the right of redemption) every Kanapattom was treated as no better than an ordinary mortgage and was in theory at least, redeemable, whether there was the clause for redemption or not; the redemption clause was a superfluity and no Jenmi would have deemed it necessary to expressly provide for redemption. Since 1042, the non-Brahmin Jenmi would have continued the same practice, for, the Courts declared in no unmistakable language that the Proclamation did not apply to him and no rights that he already enjoyed of

unconditional eviction were to be affected by the omission of the clause for redemption, which was required to be inserted only with regard to revocable leases granted by Brahmin Jenmies. It follows then that unless we have a more or less clear indication of an understanding between a non-Brahmin Jenmi and his tenant, not to revoke a Kanapattom, we should be slow to presume, much less to declare that a permanent and irredeemable tenure was intended. I would therefore advocate the adoption of this and other provisos, which would enable the Courts to distinguish the redeemable from the irredeemable Kanapattoms of non-Brahmin Jenmies. The presence of certain characteristics, in addition to those which are to be looked for in the case of demises by Brahmin Jenmies, should be insisted on before the Kanapattom made by a non-Brahmin Jenmi is declared irrevocable."

Mr. Thanu Pillay, in supporting the above proposition said :—"As observed by the President, the proposed 2nd para cuts away a portion of the basis of the 1st para, *viz.*, the right of permanent occupancy being regarded as an essential element of Kanapattom tenure. But the arguments urged on the other side are of great weight. I have carefully studied Sir Madhava Rao's Memo and the correspondence that passed between him and the Resident and the then Sadr Court prior to the introduction of the Royal Proclamation of 1042; and I feel persuaded that the term Jenmi was or rather was intended to be used in the Proclamation as embracing both Malayalee Brahmin and non-Malayalee Brahmin Jenmies. But the Courts took a different view and interpreted the term so as to confine it to Malayalee Brahmin Jenmies alone; and that interpretation must be accepted as the law until it is corrected by the legislature. On the principle that ignorance of law is no excuse we must presume that all transactions entered into between non-Malayalee Brahmin Jenmies and their tenants subsequent to the first formal decision which contained the above interpretation, were in accordance with that decision, *viz.*, that the ordinary law applied to transactions between non-Malayalee Brahmin Jenmies and their Kudiyans. It is this presumption that at once necessitates and justifies the new provision. As a matter of public policy too, the proposed amendment is not, in my opinion open to serious objection—for,

I believe the number of Kanapattoms created for the first time during the last 25 years may not be large and the bulk of the transaction will be of the nature of renewals of previously executed deeds, which do not fall under the proposed 2nd para—a renewal being no interruption, but only evidence of uninterrupted possession. For these reasons, I support the proposition.

Mr. Nagam Iyer said:—"In the class of Jenmies in Travancore, we are now endeavouring, for the first time, to create a division based on 'caste' distinctions, which I believe is unnecessary and will work serious harm to a large number of His Highness' subjects. Whether a Brahmin or not, a Jenmi is a Jenmi in all respects, and has in Travancore all the privileges and responsibilities of such, without reference to his 'caste.' There are in Sircar accounts, persons of different castes returned as 'Jenmies' and these have hitherto acted as Jenmies, under the Royal Proclamation of 1042. According to a statement of 'Thirattu' I hold in my hand, there are at present in Travancore 17 classes of such Jenmies, of whom only 3 are returned as belonging to the Brahmin caste. Excluding the 'Devaswoms' there are 13 other classes of what are now called non-Brahmin Jenmies, among whom are included the Perumpadappu Swarupam (Cochin Rajah), Kodungallur Swarupam, Pandarathinmar, Tambakkanmar, Tirumalpadanmar, Koilammar, Paliathu Menon, Vadayathuvaga, Madambimarvaga, etc., all of whom will according to the amendment now proposed, be thrown out of the class 'Jenmies' and made ordinary landlords or proprietors with power to resume the lands in the hands of their Kanapattom tenants. These tenants whom we propose to disturb are at present permanent occupancy tenants just as much as the tenants of Brahmin Jenmies are; for their landlords are 'Jenmies' in every sense of the term according to the Royal Proclamation of 1042. Judging from the 'Thirattu' statement already referred to, there are about 25,000 to 30,000 ryots, so holding lands under these 13 classes of Jenmies. This surely is a large class of His Highness' agricultural population, whom we have no right to declare by one stroke of the pen as mere 'tenants-at-will.' Reference has been made by the learned Chief Justice to Judicial decisions, in which 'Jenmies' have been interpreted to mean only Brahmin Jenmies. If so, we

should make the meaning of the Royal Proclamation more explicit and declare here, that both Brahmin and non-Brahmin Jenmies have been included in the class. The class of tenants affected by Judicial decisions must be a very limited one. Their condition cannot justify our disturbing the far larger class of tenants who have trusted to permanent occupancy, and who have hitherto behaved to their Jenmies exactly as the tenants of Brahmin Jenmies have done. The prosperity of Travancore depends mainly on the happy relations that subsist between the Jenmies and tenants. I pray that nothing should be done by this Council to disturb this happy relationship. If the amendment is passed, it would mean that the presumption is that the Kanapattom tenant of a non-Brahmin jenmi is not a permanent tenant. The fact is that he is such under the Royal Proclamation of 1042. He can be construed to be a tenant-at-will only, if any specific contract exist to that effect. The Proclamation is very clear on that point and we should adhere to it strictly.

The Council adjourned to the following day.

The Council met again in the Dewan's room, Public Offices at 12 noon, on Friday the 14th December, 1894.

Present:

The Dewan ... ... Presiding.

M. R. Ry. K. Krishnaswamy Rao Avergal.

M. R. Ry. V. Nagam Iyer Avergal.

M. R. Ry. P. Thanu Pillai Avergal.

M. R. Ry. Rama Varma Avergal, Rajah of Perapanad.

M. R. Ry. Ramanatha Rao Avergal.

M. R. Ry. A. M. Muthunayagom Pillay Avergal.

The addition to section 5 proposed at the previous meeting was further discussed.

After the discussion Mr. Nagam Iyer said:—

"If, however, this amendment is necessary in order to uphold the decisions of Courts already referred to, the earliest reported decision is, according to my friend Mr. Muthunayagom Pillay not older than 1054 M. E., *i.e.*, 16 years ago. I would, therefore, propose that 16 years be substituted for 25 years in

the amendment. This will save the tenants who have correctly understood and acted according to the terms of the Proclamation between 1042 and 1054. These surely have not been misled by the Judicial decisions of 1054 and subsequent years, if any."

The motion brought forward by Mr. Krishnaswamy Rao was put to the vote and carried by five against one.

Mr. Krishnaswamy Rao moved the omission of clause 2 of section 6.

He said :—

"Even in the absence of this para the Kudiyan can, in virtue of the right conferred on him by the first para, compel the Jenmi by suit to recognise the transfer of the holding in part or whole. There can be no right without a remedy."

Mr. Muthunayagom Pillay seconded the motion.

Carried.

Mr. Nagam Iyer said :—"I propose that clause 3 of sec. 6 be omitted altogether. The tenant and the transferee are the best Judges of what their respective shares of Michavarom should be, and any settlement they may come to, with regard to apportioning of the dues on the holding, should be final, without the permission of the Jenmi. The Jenmi's interest is sufficiently protected by clause (1) of section 6, as under that clause the liability of the entire holding to the Michavarom and other dues, continues as before."

Mr. Ramanatha Rao seconded the motion.

Carried.

Mr. Nagam Iyer moved that clause (*b*) of section 7 (1) be omitted.

He said :—

"This section is I believe one of the most important in the Bill. The chief object of the Royal Proclamation of 1042 was to protect tenants from vexatious and thoughtless evictions by Jenmies. That Proclamation itself was the deliberate work of the master-minds of a previous generation of administrators—determined upon after a most careful study of the then existing

conditions of the country and claiming no originality of enactment, but merely confirming the past practice of ages, on the ground that the Jenmies and tenants have behaved towards each other, as if they never meant to disturb the relationship once created between them. Only one condition was allowed by the Proclamation to alter this otherwise permanent relationship and that was the non-payment by the tenant of Michavarom for a whole period of 12 years. On no other condition was the title to permanent occupancy to be disturbed. We are now, by this section, creating a number of other conditions, to shake the fixity of tenure in the Kanapattom property. This is tantamount to destroying permanency of tenure, which has gone on for a long time past in Travancore and has been so firmly established by the Proclamation already referred to. I do not mean to say that a neglect to pay renewal fees or take a renewal lease by the tenant should not be visited with pains and penalties, but 'eviction' is an extreme step and should not be resorted to, for so trivial a fault. There can be no objection to the Jenmi being given facilities for the realization of renewal fees or other customary dues. We should undoubtedly help to maintain intact the status of this very inoffensive and ancient landed aristocracy of Malabar, *viz.*, the Brahmin Jenmies, but they should not be allowed to evict their tenants on this ground. We are, I fear, filing away the right of permanent occupancy in land, long ago secure to the Kanapattom tenants of Travancore. With these remarks, I propose that clause (*b*) of section 7 (1) be omitted."

Mr. Muthunayagom Pillay seconded the motion.

In opposing the motion Mr. Krishnaswamy Rao said:—"The object of this clause is to induce the tenants to pay up renewal fees without recourse to litigation. A Kudiyan who neglects to pay the fees due for six months even after the service upon him of a notice in writing, should be the last man to complain of the forfiture of the lease. A reference to section 9 of the Bill, will further show that the Courts have the power of refusing to enforce the forfeiture if the amount due, be paid at the first hearing of the suit which the Jenmi may bring on the authority of clause (*b*) in section 7. The Kudiyan who fails to pay the

fees even at the first hearing of the suit, does not deserve to be relieved against the forfeiture."

On the motion being put to the vote, it was lost by 4 against 3.

Mr. Muthunayagom Pillay, proposed the following 'Explanation' to clause (*b*) of section 7 (1) after the proviso.

"Explanation. Failure to pay renewal fees or take a renewal, due to *bona fide* differences between the Jenmi and the Kudiyan as to the amount of the renewal fees or as to the terms of the renewal, shall not be deemed to be 'neglect or refusal' within the meaning of clause (*b*)."

In seconding Mr. Muthunayagom Pillay's proposal, Mr. Thanu Pillay said :—

"I yield to none in the importance I attach to the permanent occupancy right created, or, more correctly, confirmed, by the Royal Proclamation of 1042, and I am therefore naturally disinclined to support any proposal which would undermine or detract from that right. But it is equally necessary to protect the interests of the Jenmies, to whom renewal means in many cases an enhancement of the Michavarom besides the renewal fees. Clause (*b*) is intended to safeguard the interests of the Jenmies against unscrupulous Kudiyans who deliberately and persistently refuse to take a renewal. Such Kudiyans cannot command the sympathy of this Council. But where the failure to pay renewal fees and take a renewal is due not to any wilful neglect on the part of Kudiyans, but to differences between them and the Jenmies as to the terms of the renewal, the *raison d'etre* of the above provision ceases to exist. Hence I second Mr. Muthunayagom Pillay's amendment."

Carried.

Mr. Muthunayagom Pillay proposed to add the words "and six months after the service upon him of a notice of demand in writing under this Regulation" to the proviso to section 7.

Mr. Krishnaswamy Row seconded the motion.

Carried.

Mr. Nagam Iyer said :—

"I will also recommend to the Council the omitting of clause (c) of this section. It is too philosophic an idea for the

work-a-day ordinary Travancore tenant. Every answer to a Jenmi's action might be construed to amount to a 'wilful denial of the Jenmi's title' the result of which will be the creation of much bad feeling between Jenmies and tenants as a whole and increase of unnecessary litigation with all its attendant evils."

Not being seconded, the motion was lost.

Mr. Nagam Iyer next proposed the omission of clause (*d*) of section 7 (1).

He said :—

"Gentlemen I feel it my duty to speak strongly against this sub-clause, *viz.*, that "intentional or wilful commission of such acts of waste as are calculated to materially and permanently impair the value and utility of the holding for purposes of tenancy, and to injure the interests of the Jenmi" shall form another ground for eviction. This is a most unnecessary and vexatious interference with the right of the Kanapattom tenant. The property has long gone from the Jenmi to the hands of the tenant. The tenant looks upon it as his own, subject only to the condition of regular payment of a stipulated rent and other dues to his Jenm-lord. He has lived in it and enjoyed it for ages, without the idea occurring to him of ever being turned out of it. The feeling of loyalty for the Jenmi has grown in his mind quite independently, almost in forgetfulness, of the possibility of his being even ousted from it. The Jenmi too has for a long while given up all thoughts of the property, submitting, so to speak, resignedly to what the law and longstanding custom have made the inevitable. We are now telling him that he need not think so, that his Kanapattom leases give no indefeasible right to his tenants, that he may watch the movements of his tenants and note the changes in his land from day to day. What are acts of waste and what are not should be his daily care. That is, we are now laying down, for the first time, the rule that a Kanapattom property should be so managed and maintained that it may become a good and valuable one when it comes back to the Jenmi. Its coming back to the Jenmi would appear to be the sole object of the tenancy. Is this the idea with which the Kanapattom leases have been entered into in the past? Is this the existing feeling of the Jenmies and their hundreds of thousands of

tenants in Travancore? The result will be a bad system of espionage and the worry and vexation caused to the numerous tenants of Travancore Jenmies will become considerable. By the constant interference that would thus arise, the idea of permanency in the tenure will be wholly destroyed. The character of Kanapattom tenancy will be radically altered. The beneficent objects of the Royal Proclamation of 1042 will be altogether subverted. I have therefore no doubt in proposing the omission of clause (*d*) in this section."

Mr. Thanu Pillay seconded the motion.

He said :—"Despite the limitations implied in the words 'materially,' 'permanently' and so on, the term 'waste' is so indefinite that the provision is likely to cause constant friction between Jenmies and Kudiyans and considerable annoyance to the latter. The policy of the law being to secure to the Kudiyan permanent occupancy and to the Jenmi facility to realize his dues, it is doubtful whether the extreme penalty of ouster is necessary to ensure to the Jenmi his legitimate rights. A man with permanent occupancy right is not likely to cut down valuable trees or do other acts of waste. It is suggested that he may do so in order to prevent enhancement of rent. If we bear in mind that the rent will not ordinarily exceed a fourth of the gross produce, it is unreasonable to presume that the Kudiyan would kill the goose that lays the golden eggs. But even such a possibility of injury may be guarded against by the Jenmi being given the right of suing the Kudiyan for damages. My chief objection is to the unnecessary multiplication of the grounds of eviction. It cannot be denied that Jenmies smart under the loss of the right which they fancy they formerly possessed of evicting their tenants at will and they (or at any rate the most grasping among them) are not likely to leave any means which would gratify their eviction appetite untried. When the act or the omission which constitutes the cause of action is definite and unambiguous, such as those referred to in clauses (*a*), (*b*), and (*c*), a sensible, prudent and honest Kudiyan can prevent the Jenmi rushing into Court with a suit for ejectment. But as already stated, an act of waste is undefined and it is just possible that what is intended by the Kudiyan for the improvement of

the property may be viewed by his sleeping, but dominant partner, as an act of waste. I am aware that section 10 would prevent unnecessary forfeiture. But all the same, clause (*d*) if allowed to stand will give rise to constant irritation and annoyance without an adequate compensatory benefit to the Jenmi."

Mr. Krishnaswamy Rao opposed the motion.

He observed—"The rent payable to the Jenmi is calculated upon the number of trees in the garden. The rent is also a charge upon the trees. Under certain contingencies, the holding goes back to the Jenmi. In these circumstances, it appears to me to be incorrect to say that the Jenmi has no substantial interest in the trees. Compensation in money often fails to meet the requirements of the case. Section 10 amply protects the Kudiyan against the arbitrary exercise of the Jenmi's right."

On being put to the vote the motion was lost by a majority of 4 against 3.

Clause (*d*) was thus modified and adopted:—"Intentional and wilful commission of such acts of waste as are calculated to materially and permanently impair the value and utility of the holding so as to injure the interests of the Jenmi."

Mr. Ramanatha Rao moved that the following be added as section 7-A.

"If the Kudiyan becomes aware of any proceeding by third parties to recover the holding or any part thereof on a claim adverse to that of the Jenmi or of any encroachment made upon or any interference with the Jenmi's rights concerning such holding and he fails to give, with reasonable diligence, notice thereof to the Jenmi, he shall be liable to be evicted."

Not being seconded, the motion was lost.

The Rajah of Perapanad proposed:—In the fourth line of section 8 (1) omit "$\frac{3}{4}$ of." He said that the compensation for trees shall be not $\frac{3}{4}$ but their full market value.

Not being seconded, the motion was lost.

Mr. Nagam Iyer moved that the words "on the Jenmi to give and" in section 11 be omitted and that the words "when called upon by the Jenmi to do so" be added after the word "lease" in the same section.

He said:—

"At present the Jenmi gives a renewal of Kanapattom leases to his tenants, whenever it is convenient to him to do so and there are cases in which Jenmies have not granted renewals for 50 or 70 years or even longer terms, not on account of the refractoriness of their tenants, but owing to their own laches, due either to the fact of their having too extensive domains to manage or their unexacting nature towards their tenants, whom they delight to leave altogether undisturbed. What is wanted is to secure the ready assent of the tenant to a renewal, whenever the Jenmi wants it, after a period of 12 years. This can be best done by making it 'obligatory on the Kudiyan to accept a renewal' when the Jenmi's pleasure is intimated to him."

Mr. Ramanatha Rao seconded the motion.

The motion was lost, the result of the votes being 4 against 3.

Mr. Ramanatha Rao proposed the omission of section 12.

The Perapanad Rajah seconded the motion.

It was lost, the result of the votes being 4 against 3.

Mr. Nagam Iyer next proposed that the words "the Adukuvathu and" be omitted in section 12.

He said :--

"The Kudiyan, at the time of eviction will be entitled to the Kanom minus the arrears of Michavarom and other dues, if any. He will have paid the Adukuvathu when he entered upon the lease, as the incoming tenant after him will also do. So, he need not have to pay the Adukuvathu, at the time he is released from the Kanapattom tenancy. The Adukuvathu is generally a kind of advance paid by the tenant for a prospective period of enjoyment. It is not due at the conclusion of a term of lease."

Mr. Ramanatha Rao seconded the motion.

Mr. Krishnaswamy Rao observed :—

"Adukuvathu is not paid at the creation of the tenancy. There is a difference of opinion as to whether it is paid for a prospective enjoyment of the holding or for past enjoyment. One of the tenants, in his memorial, says that it is paid for past enjoyment. I simply wish to draw the attention of the Council to these facts. I look upon this fee, as a fee for renewal. The

effect of surrender would be to deprive the Jenmi to this fee, as the incoming tenant will not pay it; and according to the motion before the Council the outgoing tenant need not pay it."

The motion was carried.

Mr. Muthunayagom Pillai proposed the addition of the following words to the 1st para of section 12:—"As also payment of compensation for improvements made by him or his predecessor in interest."

Mr. Nagam Iyer seconded the motion.

The motion was lost.

Mr. Krishnaswamy Row proposed the omission of the words "minus the Adukuvathu and arrears of Michavarom and of other dues if any" in the same section, and the addition of the following sentences to the same: "In such cases, the Jenmi shall not be liable to pay to the Kudiyan the value of the improvements and he shall not be bound to accept the surrender unless the whole of the arrears of Michavarom and other dues, if any, are also tendered at the time of surrender." He observed:—

"It was only very recently that three out of five Judges of the High Court of Travancore on a reference to a Full Bench decided that the Kudiyan may surrender his holding. Two Judges dissented from the decision of the majority. General impression seems to be that the right of surrender is an innovation. Under the Legislative enactments of British India relating to landlord and tenant, the tenant who surrenders his holding could not claim the payment of the value of improvements made by him. I believe that the holders of Sirkar lands in Travancore, do not get from the Sirkar, the value of improvements made by them on the holding they surrender. The effect of entitling Kudiyans of Jenmies to the value of improvements made by them on the holdings which they voluntarily surrender would be to place the Jenmi entirely at the mercy of his tenants. In a particular locality, if all the tenants combined together for the purpose of obtaining more favourable terms than the law allows, they have simply to make costly improvements which now include buildings also, and call upon the Jenmi to take back the holdings paying them the value of improvements. To meet the large and

sudden demands of a number of tenants would be simply impossible. A man who in good faith surrenders his holdings, will hardly have anything on the holding, for which he may claim compensation. As he has the right of mortgaging or selling his holding, it is only unsaleable or valueless holdings that he will surrender to the Jenmi. Its condition could not be such as to warrant any claim for compensation for improvements. The proposal to entitle the voluntarily outgoing tenant to improvements, would in my opinion be useful only to tenants who really wish to retain the holdings but ostensibly surrender them in order to drive the Jenmi to hard bargains. Upon a consideration of all these circumstances, the Select Committee came to the conclusion that the Kudiyan who voluntarily surrenders a holding, should not be allowed to claim the value of improvements. I regret that they made no express provision on the point. I therefore propose that a para be added to section 12, exempting the Jenmi from liability to pay the value of improvements and authorizing him to decline to accept the surrender unless all the arrears,—whether of Michavarom or of other dues—are fully paid. These provisions will act as a check against the abuse of the concession made in favour of the Kudiyans."

In seconding the above amendment Mr. Thanu Pillay said :— "The law having vested in the Kudiyan permanent occupancy right and recognised in the Jenmi as a rule, only the right of receiving rents and other dues, the justice and expediency of section 12 itself may well be questioned. But there may be cases where it will be ruinous to the Kudiyan to retain a holding especially as no reduction or remission of Michavarom is allowable except at the time of renewal. It is to meet such cases, I take it, this section is intended. While then it is expedient to provide for such hard cases, it is equally necessary to protect Jenmies from unscrupulous Kudiyans who may make costly and foolish improvements and seek to reimburse themselves at the cost of the Jenmies. Compensation for improvement is justly claimable only in cases of eviction by the action of the Jenmi. If the contrary principle is admitted, it will be in the power of Kudiyans to cause serious embarrassment to Jenmies."

The Rajah of Perapanad objected to this section altogether

observing that to compel the poor Jenmi to take back the land and to award compensation for all the many improvements is to lead him to utter ruin. The Jenmies as a class are very poor.

The motion was carried.

Mr. Ramanatha Rao proposed the substitution of the following for section 13. "Arrears of Michavarom and renewal fees to the Jenmi shall be a charge on the holding of a Kudiyan and shall have priority over all other charges on the same, save arrears of tax due to Government."

Mr. Muthunayagom Pillay seconded the motion.

Carried.

Mr. Nagam Iyer proposed that the words "and with the consent of a Kudiyan" be added to section 14, after the words—"Chapter III," in line 1.

He said:—"The enhancement of Michavarom by a Jenmi cannot be enforced in all cases of Kanapattom tenancy. The Proclamation of 1042 allows a Jenmi the right to readjusting the rent at the renewal of a lease only 'when such readjustment is allowed by custom.' We now propose to allow him the right of enhancing the Michavarom in all cases. This will destroy the nature of the Kanapattom tenure, which according to the present law protects the tenant from any action for ouster by Jenmies, so long as he pays 'the stipulated rent and other customary dues.' Section 14 will make Kanapattom leases like the leases between the ordinary landlords and their tenants in Travancore. I will therefore add that an enhancement of Michavarom can be made under this section only "with the consent of a Kudiyan."

Not being seconded the motion was lost.

The Council adjourned to the following day.

The Council met again in the Dewan's Room, Public office at 7 A.M. on Saturday, the 15th December 1894.

Present:—

The Dewan............................Presiding.
M. R. Ry. Krishnaswamy Rao Avergal.
Mr. F. Watts.
M. R. Ry. V. Nagam Iyer Avergal.

M. R. Ry. P. Thanu Pillay Avergal.

M. R. Ry. Rama Varma Avergal, Rajah of Perapanad.

M. R. Ry. Ramanatha Rao Avergal.

M. R. Ry. A. M. Muthunayagom Pillay Avergal.

Mr. Ramanatha Rao proposed that in section 17 (*a*) the words "Illom, Mana or Matom" within brackets be omitted.

Mr. Muthunayagom Pillay seconded the motion.

Carried.

The Perapanad Rajah said with reference to section 17 (*c*) that "in default of payment of renewal fees at the time they become due, interest shall be charged on the arrears only at the rate of 6 per cent. per annum when they were payable in money, but when in kind, only at 10 per cent.

Not being seconded, the proposition was lost.

Mr. Muthunayagom Pillay moved that in the place of section 21 (*b*) the following be substituted "In the case of other lands, in addition to the foregoing, grounds :—

(4) that the number of trees in the holding on which Pattom is assessable has increased.

(5) that there has been a substantial rise in the average local prices of the produce of those trees during the currency of the previous Kanapattom."

In seconding the above motion, Mr. Thanu Pillay observed, that Mr. Muthunayagom Pillay's amendment was to substitute clause (*b*) as it stood in the Bill originally introduced, for the modified clause put in by the Select Committee and he thought that the clause as originally framed was more precise and workable than its substitute.

Carried.

Mr. Krishnaswamy Rao proposed that original clause 5 of section 21 be modified thus :—"(6) that after this Regulation comes into force the Kudiyan erects factories, shops or other buildings not being erections referred to in clause (*e*) of Explanation 1 to clause 13 of section 3, and the annual rental value of the holding has thereby increased."

Mr. Watts seconded the motion.

Carried.

Regarding the last para but 2 of section 21, Mr. Thanu Pillay said "It will be observed that this para as it stood in the original Bill has been considerably modified by the Select Committee. My own views did not command the assent of the majority in the Committee and I gave in. But as I feel that the matter is one of great importance, I would venture to say a few words in explanation of my position. All are agreed that when improvement has been effected by and at the cost of the Kudiyan, he should be given credit for such improvement. The difference is in the mode of apportioning the benefit of the improvement. The section as it stands provides for the cost of the improvement being estimated and interest on the estimated outlay being made the Kudiyan's share of the result of the improvement. I doubt whether, regard being had to the dearth of capital and the unenterprising character of the rural classes, the above is a full and fair return for the capital invested by the Kudiyan on improvements and whether it would be a sufficient inducement to the Kudiyan to make such investments. My contention is that the standard by which the return to the Kudiyan should be gauged is not the estimated capital invested by him in making an improvement, but the addition which such improvement has made to the letting value of the land. I need hardly point out that the result of an improvement does not always vary directly with or in any definite ratio to the capital expended, and the difference in many cases is due to the difference in the skill, intelligence and exertion of the person who makes the improvement. The inherent qualities of the soil constitute, no doubt, a factor, but, except in the case of virgin soils, this factor may practically be left out of account. I see some of my friends seem to doubt whether skill and intelligence can be taken into account in calculating the value of improvements. I answer that they can and they ought to. They are no less instruments of production than land and capital. 'The very greatest of the instruments of production................ are the brain and the hand of individual men.' The differential result or productive power of different applications of the same amount of capital being granted, it follows that the rough and ready rule adopted in the amended Bill is not calculated to

stimulate enterprise and economy. The Famine Commission after an elaborate investigation came to the conclusion that one of the chief reasons for the disinclination of landholders to invest money on improvements of the land is 'their doubt whether at the expiration of a term of settlement, they will be allowed to enjoy the whole profits of such an improvement or whether it will form the occasion for an enhancement of their assessment.' The normal interest on the money or rather the interest provided for the Kanom is certainly different from 'the whole profits of the improvement.' I would in this connection quote the following words from the speech of His Excellency the Viceroy in connection with the Land Improvement Loans Bill which was considered at the meeting of the Imperial Legislative Council on the 10th October 1883. 'I should like to say a few words as regards my own opinion on this subject. Sir Stuart Bayley has said that there are two theories on this question—the English theory and the Indian theory—and he defined the English theory to be that a tenant who made improvements in the land which he occupied ought, if he were removed from his farm, to receive compensation based upon the addition which his improvement had made to the letting value of the land. I very much wish that I could say that that is the recognised English theory upon this question. It is my own theory unquestionably and it is a theory which has been partially and in the end, I fear, imperfectly adopted by Parliament at home; but it is a theory only held by a certain number of persons and there is a wholly antagonistic theory very prevalent among other persons in England, namely, that the tenant should only receive, on quitting his holding, repayment of the actual outlay he may have made on his improvements.' The Council will be pleased to see from the foregoing that the distinction I have been advocating is not a fanciful or airy one. As I however find that the Council is not disposed to modify the section as amended by the Select Committee I do not press the point."

Mr. Watts moved that the last para of section 21 be modified thus :—" Where enhancement is allowed on the ground mentioned in clause (6) the rental value shall be the annual rental of the building according to the rates prevailing in the neighbourhood

less interest at 6 per cent. per annum on the value of such holding and the cost of maintenance."

Mr. Muthunayagom Pillay seconded the motion.

Carried.

Mr. Ramanatha Rao moved that in clause (*a*) of section 22 'one-third of the gross produce' be substituted for 'one-fourth of the gross produce.'

Not being seconded, the motion was lost.

Mr. Watts moved that the words 'fruit-bearing' before 'trees' in line 3, clause (*b*) of section 22 be omitted.

Mr. Thanu Pillay seconded the motion.

Carried.

Mr. Muthunayagom Pillay proposed that the following be substituted for clause (*b*), section 22.

"The Pauttom on other lands shall, in like manner, not exceed one-fourth of the estimated average annual yield of the trees growing thereon, commuted into money at the average market rate, the average being based upon the market price of the different kinds of staple produce for 12 years preceding. If no such trees exist, the Pauttom shall be taken to be equal to the Payattupauttom prevailing in the Proverthy."

Mr. Thanu Pillay seconded the motion.

Carried.

Mr. Krishnaswamy Rao moved that section 22 (*c*) be divided into clauses thus:—

"(*c*) The Pattom on buildings shall be one-half of the rental value fixed under the last para of the preceding section.

"(*d*) The Pattom so assessed shall be subject to deduction on account of interest on the Kanom money, but not on account of existing Sircar tax or customary dues and renewal fees which shall be paid by the Kudiyan out of his share of the produce."

Mr. Watts seconded the Motion.

Carried.

Mr. Thanu Pillay said with reference to the proviso to Section 22 of the Bill before the Council.—

"I think the proviso is objectionable, as it does not hold the balance equally between Jenmies and Kudiyans. After having laid down elaborate rules for assessing pattom, we say that the

existing rates shall not be disturbed provided they are above the statutory rate. We have no information now as to the number and proportion of Kanapattoms in which the existing rates of Michavarom are above the statutory rate nor how the former rates compare with the latter. Suppose that in the majority of cases the existing rates are high—so high as to eat up all the profits of the Kudiyan. In this case the proviso would either pauperize the Kudiyans or compel them to abandon their holdings. I see that one of my friends seems to think that so long as the Kudiyan has the right to surrender his holding, the proviso would not cause real hardship. He seems to think further that the parties having originally contracted with their eyes open, there is no hardship in compelling them to carry out the terms of the contract. I would point out to my friend that the law of landlord and tenant has never been and never will be a law of free contract. The landlord practically dictates his terms to the tenant and the latter must either accept them or leave, which means that he should tear himself away from a place sanctified and endeared by many associations a place which probably contains the sacred remains of his ancestors and where he has established his family deity and built his tarawad house. I think therefore that the right to surrender the holding would not mitigate the hardship arising from the high rate of Michavarom fixed in the existing lease."

Mr. K. Krishnaswamy Rao remarked :—

"In framing this proviso, the Select Committee followed the principles enunciated by the Government in the Settlement Proclamation, regarding the Sircar otti lands. The Kanapattom tenure is analogous to the Sircar otti tenure. If the Government is not bound to grant the abatement of the existing rates, on the new principles of Settlement, how can we ask a comparatively petty landlord, I mean Jenmi, to grant abatement of the existing Michavarom on grounds other than those mentioned in section 24. The effect of allowing the abatement of existing rates on the sole ground that they are in excess of $\frac{1}{4}$ of the gross produce which we have now fixed as the maximum rent payable to a Jenmi would be a frightful increase in litigation, and disturbance of the existing state of things acquiesced in by both the parties for a number of years.'

After some further discussion, the President proposed that the following proviso be substituted for that in the Bill.

"Provided that the existing Pattom shall not be disturbed for the reason only of its being above or below the proportion fixed under this section."

Mr. Watts seconded the motion.

Carried, Mr. Krishnaswamy Rao *dissenting*.

The Council met again at 2 P.M.

PRESENT:

The Dewan.........*Presiding*.

M. R. Ry. Krishnaswamy Rao Avergal.

Mr. F. Watts.

M. R Ry. V. Nagam Iyer Avergal.

M. R. Ry. P. Thanu Pillay Avergal.

M. R. Ry. Rama Varma Avergal, Raja of Perapanad.

M. R. Ry. R. Ramanatha Rao Avergal.

M. R. Ry. A. M. Muthunayagom Pillay Avergal.

Mr. Krishnaswamy Rao moved that the 2nd proviso to section 22 be made section 21-A with the words "Provided further that" in the 1st line omitted and the words 'or abatement' added after 'enhancement' in line 2.

Mr. Ramanatha Rao seconded the motion.

Carried.

Mr. Nagam Iyer moved that clause (*a*) of section 24 be modified thus :—

"(*a*) that the area of his holding has been diminished not by the neglect, but by the action of the sea, river or lake or like causes."

Mr. Ramanatha Rao seconded the motion.

Carried.

Mr. Thanu Pillay moved that the word 'assessable' be substituted for 'fruit-bearing' in clause (*d*) of section 24.

Mr. Watts seconded the motion.

Carried.

Mr. Krishnaswamy Rao moved that a new clause (*e*) to the same section be added "(*e*) that the rate of the current pattom of his holding is above the prevailing rate for similar lands in the village in which it is situated."

Mr. Nagam Iyer seconded the motion.

Carried.

Mr. Muthunayagom Pillay moved that the words "from the date of the order by the Munsiff to make good the same" be added at the end of clause (2) of section 29.

Mr. Ramanatha Rao seconded the motion.

Carried.

Mr. Ramanatha Rao moved that section 40 be modified thus:—

"Notwithstanding anything contained in the foregoing, the provisions of this Regulation shall not apply to any Kanapattom executed since the 25th day of Karkadagom 1042, which expressly provides for redemption."

Mr. Muthunayagom Pillai seconded the motion.

Carried.

Mr. Thanu Pillay moved that the Explanation to section 40 be made section 41 with the words "the tenancy is terminable or otherwise" substituted for 'Kanapattom lease is determinable or otherwise' in lines 2 and 3 thereof.

Mr. Nagam Iyer seconded the motion.

Carried.

Mr. Muthunayagam Pillay moved that a new section (42) be added as follows:—"Notwithstanding anything contained in the foregoing, the provisions of this Regulation shall not apply to any Kudiyan who or whose predecessor in interest has held the holding for more than fifty years preceding the date of this Regulation without paying Michavarom and other dues or without taking any renewal within the said period of fifty years. Nor shall the provisions apply to any right declared, established or already acquired by a Jenmi or Kudiyan at the date this Regulation comes into force."

"*Explanation.*—If any time for redemption has been specially provided for, the fifty years shall be calculated from the date on which the stipulated term expires."

Mr. Thanu Pillay seconded the motion.

Carried.

Resolved that the Bill, as amended, be read again on a future day of which previous notice shall be given.

SHUNGRASOOBYER,
President.

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